

1       **(The following proceedings were held in open court, in the**  
2                                   **presence of the jury:)**

3           COURT ATTENDANT: Come to order. Department 45 is  
4 once again in session. The honorable Judge Judy Hersher  
5 presiding. You may be seated.

6           THE COURT: Who is our next witness?

7           MS. CLEMENT: Margaret Peggy Stevenson, pursuant to  
8 776, your Honor.

9           THE COURT: Okay. Ms. Stevenson, if you would please  
10 come forward to our witness stand. When you get there,  
11 please remain standing. You can put your purse down. Raise  
12 your right hand and face our clerk.

13          THE CLERK: Do you solemnly state that the testimony  
14 you are about to give in the cause now pending before this  
15 Court will be the truth, the whole truth, and nothing but  
16 the truth, so help you God?

17          THE WITNESS: I do.

18          THE CLERK: Please be seated.

19          THE WITNESS: Thank you.

20          THE CLERK: State your full name and spell it for the  
21 record.

22          THE WITNESS: Margaret Phalen Stevenson,  
23 M-a-r-g-a-r-e-t P-h-a-l-e-n S-t-e-v-e-n-s-o-n.

24          THE COURT: Okay. Go ahead.

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1 TESTIMONY OF  
2 MARGARET PHALEN STEVENSON, Witness called under Evidence  
3 Code 776 on behalf of the Plaintiffs,

4 CROSS-EXAMINATION

5 By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
6 the Plaintiffs:

7 Q Ms. Stevenson, um, do you sometimes go by Peggy?

8 A Yes, I do.

9 Q Is that how, more frequently, you like to be referred  
10 to?

11 A Yes, it is.

12 Q Okay. Um, Ms. Stevenson, can you tell us, um, did you  
13 ever work at Emerald Hills?

14 A Yes, I did.

15 Q And can you tell us what your job title was and when  
16 you worked there?

17 A I was the resident care director, and I worked there  
18 from March of '08 to -- was that right?

19 Q Yes.

20 A March of '08 to the end of January '09.

21 Q And we met a year or two ago at your deposition?

22 A Yes.

23 Q And, um, at that time we went through Joan Boice's  
24 chart together; do you remember that?

25 A I do.

26 Q And I asked you a lot of questions about your job and  
27 your experience and training and everything that you did  
28 while you were at Emerald Hills?

1 A Yes, you did.

2 Q Okay. And, um, there is water up there if you need it  
3 in that little cup -- in the pitcher. If you would like a  
4 bottle, we can get you that too, okay?

5 A Thank you.

6 Q You're welcome.

7 Now, your depositions, we actually went two different  
8 days, March 31st of 2010 and June 28th, 2010; do you  
9 remember that?

10 COURT REPORTER: 28th or 20th?

11 Q (By MS. CLEMENT) 2011. I'm sorry. March 31st and  
12 June 20th of 2011?

13 A Right.

14 Q And, um, you didn't remember Joan Boice at all, did  
15 you?

16 A I did not. It had been quite a while since I thought  
17 about Emerald Hills.

18 Q And, um, you don't remember her; true?

19 A True.

20 Q And when we were in your deposition I actually showed  
21 you some pictures of Joan Boice and that did not refresh  
22 your recollection about remembering her, did it?

23 A It didn't.

24 Q And you didn't have any recollection of ever speaking  
25 with her family; is that right?

26 A That's correct.

27 Q Did you remember her husband Myron at all?

28 A He looked vaguely familiar in the picture you showed

1 me, but I did not recall him specifically.

2 Q Did you -- do you remember ever having any conferences  
3 with the Boice family?

4 A No, I do not.

5 Q Did you -- do you have any recollection of interacting  
6 with Mrs. Boice's health care provider from Kaiser, like her  
7 doctor, Dr. Awan?

8 A No, not specifically.

9 Q How about any home health care providers that came  
10 out, did you have any recollection or do you have any  
11 recollection of meeting with them?

12 A There were several health care providers that would  
13 come out for different residents but not in particular hers.

14 Q Now, um, when Mrs. Boice came to the facility do you  
15 remember if she was walking with a walker or not?

16 A I do not.

17 Q Do you remember ever doing a resident assessment of  
18 Mrs. Boice?

19 A I don't recall it. I have seen it on paper.

20 Q Okay. Have you -- we talked about it in your  
21 deposition; true?

22 A True.

23 Q And have you looked at it since then?

24 A I have.

25 Q And did that at all refresh your recollection at all  
26 about Mrs. Boice?

27 A No, it did not.

28 Q When you did that evaluation of Mrs. Boice, that was

1 the day that she moved in; true?

2 A I don't know.

3 Q Okay.

4 A If that is what it said on the paper.

5 Q Okay. Do you remember interacting with her family at  
6 the time?

7 A No, I do not.

8 Q And you didn't remember that at your deposition  
9 either, did you?

10 A No, I did not.

11 Q Okay. Um, do you remember meeting, um, Mrs. Boice's  
12 daughter-in-law at all?

13 A I don't recall them.

14 Q Did you know that Mrs. Boice had multiple pressure  
15 ulcers when she left Emeritus in December of 2008?

16 A I did not recall it. I have seen some documentation  
17 that you sent over that had something about that on it.

18 Q Okay. And that documentation, that was in a, um,  
19 letter I sent to you in October of this year?

20 A Um, it was a letter and a large binder of material.

21 Q Can you -- may I approach and show the -- help the  
22 witness find an exhibit, your Honor?

23 THE COURT: Yes.

24 What is the number?

25 MS. CLEMENT: 281.

26 There is little tabs on this side for you to find it.

27 THE WITNESS: Okay.

28 Q (By MS. CLEMENT) Um, that first page of Exhibit 281,

1 is that a letter from me to you dated October 10th of 2012?

2 A It is a letter from you to me dated October 10th,  
3 2012.

4 Q And in that letter did I -- attached to that letter  
5 was there a subpoena for you to appear at the trial?

6 A Um, there is one here.

7 Q Do you remember being served with a subpoena by a  
8 actual process server?

9 A Yes, I do.

10 Q Okay. And did this letter come with that subpoena; do  
11 you recall that?

12 A There was a letter with the subpoena, yes.

13 Q Okay. And does this appear to be the same letter that  
14 you received at about the time that you were served with the  
15 subpoena?

16 A It does.

17 Q Okay. And in that, um, letter I told you that, um, we  
18 were going to have a trial here we thought in October of  
19 2012, but, um, we didn't know whether we would get assigned  
20 a courtroom or not?

21 A Correct.

22 Q And I asked you to return, um -- if you wanted to, to  
23 please return the second page letting us know if you could  
24 be contacted on 24-hour notice rather than having to come to  
25 the courthouse and, um, if we didn't get a courtroom; true?

26 A True.

27 Q And in that letter I also offered, um -- asked if you  
28 would give me a call to discuss your testimony, the timing

1 of when you would appear, and any assistance you might need  
2 with transportation, directions to the courthouse or any  
3 questions you could have; true?

4 A True.

5 Q And I gave you my e-mail and cell phone number too;  
6 true?

7 A Yes.

8 Q Okay. And then I wrote to you again on October 18th?

9 A Yes.

10 Q And I let you know that we still hadn't been confirmed  
11 if we were going to have a courtroom or not; true?

12 A True.

13 Q And I told you that, um, if we weren't ready for your  
14 testimony the Court would make you come in and then send you  
15 home and require you to appear on another date; true?

16 A True.

17 Q And I sent you another copy of my contact information  
18 and asked you to call; true?

19 A True.

20 Q And then on October 29th I sent you another letter;  
21 true?

22 A Yes.

23 Q And in that letter I told you that we had been  
24 assigned a courtroom and a judge and that the trial would  
25 not commence until January 2nd; true?

26 A True.

27 Q And I let you know that, um, there were going to be  
28 other matters involving the Court, pretrial matters, and I

1 wanted to let you know, um, or ask you to let us know if you  
2 had any out-of-town commitments that you might not be  
3 available; true?

4 A Correct.

5 Q And I also let you know that our judge was not going  
6 to have court on Fridays and that January 21st would be a  
7 court holiday; true?

8 A Yes.

9 Q And then I sent you another letter on December 31st,  
10 and at this point in time you hadn't yet contacted me; true?

11 A True.

12 Q And at this time I let you know that we still would  
13 like to -- I still wanted to go over your testimony either  
14 in person or by telephone before we called you to the stand  
15 in the next week or two; true?

16 A Correct.

17 Q And I was hoping we would be calling you the week of  
18 January 7th at that point; true?

19 A True.

20 Q And I told you the reason for going over your  
21 testimony was twofold. Um, first, to ensure you understand  
22 the Court's orders identifying exactly what witnesses can  
23 and cannot say; true?

24 A Correct.

25 Q And then I told you that I wanted to help you focus on  
26 exactly what topic areas you would be questioned on at  
27 trial; true?

28 A Correct.



1 Q And I told you the purpose of doing this was to ensure  
2 that your time on the witness stand would be as short as  
3 possible; true?

4 A True.

5 Q And it was our intention to have you on and off the  
6 stand in a hour or less as opposed to a day or two which  
7 could happen if we were not able to prepare in advance;  
8 true?

9 A Correct.

10 Q And at that time I also told you that I was going  
11 to -- I was enclosing Joan's entire chart from the facility;  
12 true?

13 A True.

14 Q That was the big package you got; true?

15 A Right.

16 Q And I tabbed the pages which had your handwriting on  
17 them?

18 A Yes.

19 Q That we had gone over in your deposition?

20 A Yes.

21 Q And I let you know there were other areas of inquiry  
22 we would like to discuss as well; true?

23 A True.

24 Q And I told you we would be picking a jury hopefully  
25 January 2nd through 4th and opening statements on January  
26 7th; true?

27 A True.

28 Q And, again, letting you know there would be no court

1 on Fridays and asked you to contact me; true?

2 A Correct.

3 Q Okay. And you didn't; is that true?

4 A I did not.

5 Q But you did take the time -- did you take the time to  
6 go over the records of Mrs. Boice that I sent you?

7 A I did.

8 Q Okay. Great. Now, during your deposition I showed  
9 you some Kaiser documentation that, um, at least as of  
10 November 19th, um, there was notice to you that Joan Boice  
11 had some prohibited conditions of having a pressure ulcer of  
12 stage 3 or greater; do you remember that?

13 A I don't remember showing something that said that I  
14 was aware of it in those documents that you showed me.

15 Q Okay. You don't remember Joan Boice having pressure  
16 ulcers at all; is that true?

17 A No.

18 Q Is that true?

19 A That's true.

20 Q Okay. Did you ever do any assessment of Mrs. Boice at  
21 all at any time during her three months at Emerald Hills?

22 A According to the records I did.

23 Q And what assessment?

24 A One when she came in, and, um, on -- according to the  
25 paperwork there was one about a month later and one about a  
26 month after that.

27 Q And what paperwork is that?

28 A The original assessment.

1 Q Okay. So we know that was part of her chart; true?

2 A Correct.

3 Q Okay. And what other assessments did you do?

4 A Um, I did computer assessments in our computer system.

5 Q Okay. And when you say you did computer assessments,  
6 did you tell me that at the time of your deposition?

7 A I did not.

8 Q And I showed you those -- are those computer  
9 assessments you're talking about, the Vigilant?

10 A Yes, they are.

11 Q And did I show you those Vigilants in your deposition?

12 A I don't recall.

13 Q Do you recall in your deposition me showing you the  
14 Vigilant assessments and you indicated that you did not know  
15 if you had completed those or not?

16 A Now that you say that, yeah, I do, I do recall that we  
17 went over them. There is no marking on that, um, particular  
18 document saying that, who put it into the computer.

19 Q And, um, there is no signatures on it either, are  
20 there?

21 A Right.

22 Q So you don't know -- well, did someone tell you that  
23 you prepared that?

24 A No.

25 Q Okay. So you don't know if you prepared that Vigilant  
26 assessment of Mrs. Boice or not, do you?

27 A I don't recall.

28 Q You -- you didn't get any training on the Vigilant

1 program, did you?

2 A There was a manual.

3 Q Did you get any training on it?

4 A Did I get training? I believe, um, the executive  
5 director trained me on it. It was part of my on-boarding.  
6 It was a fairly simple program.

7 Q Um, do you have any recollection as to why Mrs. Boice  
8 left the facility?

9 A Other than what's in the records. Do I have a  
10 personal recollection? No. But according to the records  
11 she left because, um, she did have some pressure wounds.  
12 The family preferred she would be on Hospice, but we didn't  
13 want to take her on as a Hospice patient, so she was sent  
14 out to a skilled nursing facility.

15 Q And why do you say "the family preferred her to be on  
16 Hospice"?

17 A That is what the documentation is reflective of.

18 Q Did you ever have any conversation with the family  
19 about Mrs. Boice going on Hospice?

20 A Not that I can recall. Just in what is in the record  
21 of e-mails back and forth to the executive director and, um,  
22 copies went to me and, um, notations in the Kaiser  
23 documents.

24 Q Are these all documents -- these Kaiser documents and  
25 these e-mails, are these things you have looked at since  
26 your deposition?

27 A Yes.

28 Q And when did you look at those?

1 A In the last couple of months.

2 Q Okay. Who gave you those to look at?

3 A Um, they were provided to me by my attorney.

4 Q And who is that?

5 A Mr. Reid.

6 Q Okay.

7 A I'm represented by them as well.

8 Q Did you, um, leave Emeritus at Emerald Hills in part  
9 because you were afraid that your license was in jeopardy?

10 A No.

11 Q Is that what you told me in your deposition?

12 A I don't recall. I believe what I told you was I  
13 wanted to go and do Hospice work.

14 Q Isn't it true, um, Ms. Stevenson, that you told me  
15 after your first deposition was over that you left because  
16 you were afraid of losing your license?

17 A I don't think so. You and I had an off-the-record  
18 conversation --

19 Q Right.

20 A -- which is what made me seek out other counsel that  
21 you provided to the deposition the second time. And, um, we  
22 did talk about my own personal feelings about, um, providing  
23 care and -- and the difference between what a nurse might  
24 think and what the law says.

25 Q Now, you didn't have any training on Title 22 when you  
26 went to work at Emeritus; true?

27 A I read Title 22 from front to back when I went to work  
28 there because it was part of the requirement of what was

1 protecting the patients and -- the residents there actually.  
2 Sorry. I have been doing patient work so I say patient, but  
3 they were residents.

4 Q Do you recall telling me that Emeritus Corporation  
5 never gave you any training on how to do your job as the  
6 resident care director?

7 A I do remember that in my initial deposition when I  
8 could not recall a lot of what I had done four years prior.

9 MS. CLEMENT: Your Honor, at this time Plaintiffs  
10 would seek to play story board clip 162, lines 14 through  
11 17.

12 THE COURT: Any objection?

13 MR. REID: No, your Honor.

14 THE COURT: Okay.

15 **(The following video excerpt was then played in open court:)**

16 Q Did Emeritus Corporate ever give you any training on  
17 really how to do your job as the resident care director?

18 A No.

19 **(Video stopped.)**

20 Q (By MS. CLEMENT) Would you agree that Emeritus at  
21 Emerald Hills required its staff, including yourself, to  
22 comply with its written policies and procedures?

23 A Yes.

24 Q And isn't it true that when you, um, were the resident  
25 care director at Emerald Hills you didn't have any training  
26 in Emeritus policies and procedures?

27 A I had on-boarding, looking through documentation as  
28 one would at a job, but, um, did someone take me by the hand

1 and walk me through my office? No. I did go to another  
2 office and was there for a day, to another resident care  
3 director's office.

4 MS. CLEMENT: Your Honor, at this time Plaintiffs  
5 would request to play story board clip 274 -- 273, lines 23  
6 through 274, line 6.

7 THE COURT: Any objection?

8 MR. REID: I don't think it's impeaching, your Honor.

9 THE COURT: Is there an objection?

10 MR. REID: No, your Honor.

11 THE COURT: All right.

12 **(The following video excerpt was then played in open court:)**

13 Q And what training did you feel was lacking for you  
14 when you were over at the Kirby Roseville Memory Care Unit?

15 A I did not have a clear directive of what my  
16 responsibilities were in the two days per week. Quite  
17 honestly, at Emerald Hills I was very much -- I did what  
18 Nancy told me to do. Because I had no training, so I just  
19 followed what she would ask me to do. And there was no one  
20 there to tell me what to do there.

21 **(Video stopped.)**

22 Q (By MS. CLEMENT) So, um, while you were working at  
23 Emerald Hills you were also asked to work two days a week at  
24 the stand alone Memory Care Unit in Roseville; true?

25 A Um, for a very short time. It was probably six weeks  
26 or less while they waited -- while they were interviewing  
27 people to take that job.

28 Q And at the time that you worked at -- do you actually

1 remember the exact times that you worked there?

2 A No, I don't.

3 Q Do you remember how long you worked there?

4 A It was less than six weeks.

5 Q Do you remember what dates that you worked there?

6 A No.

7 Q And, um, it's true that while you worked at the  
8 Roseville facility two days a week you were supposed to be  
9 the full-time, um, resident care director at Emerald Hills;  
10 true?

11 A I worked full-time for Emeritus. I was where they  
12 told me I was to be.

13 Q And while you were in the, um -- the reason you, to  
14 your understanding, had to go over to Roseville is because  
15 they didn't have a executive director or a nurse; true?

16 A I did not know about the executive director. I knew  
17 they did not have a wellness coordinator or wellness  
18 director or nurse, whichever title that one was there.

19 Q Do you remember -- sorry, your Honor.

20 THE COURT: That is okay.

21 MS. CLEMENT: I would think after this long weekend I  
22 wouldn't be so tired but I am.

23 Q (By MS. CLEMENT) Um, is it true you had no training  
24 from Emeritus on policies and procedures about delivering  
25 medications?

26 A I had whatever training was in the, um, manuals.

27 Q Is it true you had no training on the policies and  
28 procedures about bathing residents and the other things that



1 Emeritus wanted you to do?

2 A Did I have training?

3 Q Yes.

4 A I was a nurse, I think I know how to bathe a  
5 patient --

6 Q Okay.

7 A -- really.

8 Q Isn't it true that you didn't get training in that?

9 A No, I did not from them.

10 Q Do you recall, um, that during the course of your  
11 employment you didn't really know what the scope of your job  
12 was as the resident care director?

13 A Well, I did in the sense that I had a job description.

14 MS. CLEMENT: At this time, your Honor, Plaintiffs  
15 would seek to play the deposition, page 258, lines 9 through  
16 13.

17 MR. REID: No objection, your Honor.

18 THE COURT: Okay. Thank you.

19 **(The following video excerpt was then played in open court:)**

20 Q Did you feel during the course of employment that you  
21 didn't really know what the whole scope of your job was as  
22 the resident care director?

23 A I do recall feeling that way.

24 **(Video stopped.)**

25 Q (By MS. CLEMENT) Isn't it true that you received no  
26 training on how to document the residents' care treatment  
27 and conditions in their charts?

28 A I had the manuals that trained me how to do that.

1 MS. CLEMENT: At this time, your Honor, the Plaintiffs  
2 would seek to, um, show deposition page 257, lines 21  
3 through 25.

4 MR. REID: No objection.

5 THE COURT: Okay.

6 **(The following video excerpt was then played in open court:)**

7 Q How about, did you have any training on the  
8 documentation of how the residents' care, treatment and  
9 conditions were to be documented in the residents' chart?

10 A No.

11 **(Video stopped.)**

12 Q (By MS. CLEMENT) Um, so, for example, when you worked  
13 there you didn't know that if a resident had a change in  
14 their condition the staff were supposed to document in the  
15 charts for the residents on each shift until the condition  
16 resolved; true?

17 A True.

18 Q And it's true that you received no training on how to  
19 follow-up on physician's orders; true?

20 A I'm a nurse, I know how to follow-up on a physician's  
21 order. But did they train me how to do that? I don't think  
22 so.

23 Q Okay. Well, do you have any understanding as to why  
24 no one followed up on Mrs. Boice's physician order of  
25 October 14th, 2008, to take her to the hospital -- to Kaiser  
26 to have an x-ray of her right foot and ankle when she  
27 couldn't bear weight on her right foot and was having more  
28 frequent and intense pain?

1 A I don't know why that wasn't followed through. I  
2 don't know where the problem occurred with that. Um, it was  
3 reported to the physician by us and they sent back a fax  
4 saying that she should come in for an x-ray. We would not  
5 have been responsible to take her for that x-ray, but the  
6 fact that she didn't go, I don't know where that -- where  
7 that landed. I don't know if the family was informed and it  
8 didn't happen or I don't know if it just didn't happen. I  
9 just don't know. It was a long time ago.

10 Q You've spent a lot of time looking at the record,  
11 correct?

12 A Yes, I have taken some time.

13 Q And you saw that it wasn't a nurse, it wasn't -- well,  
14 let me lay a foundation.

15 You were the only nurse working there; true?

16 A Correct.

17 Q And when you weren't there, um, whose responsibility  
18 was it to assess the residents?

19 A They didn't really assess them as much as observe, and  
20 it was everyone's job to observe our patient or our  
21 residents there. It's not a medical facility.

22 Q No, it's not a medical facility but they had residents  
23 there who needed skilled care; true?

24 A True. And home health would come in and take care of  
25 that.

26 Q When home health came in, were they there 24/7 caring  
27 for them?

28 A No.

1 Q They would only come in infrequently; true?

2 A Just as they would in someone's home if they were  
3 required to have home health, if they are not required to be  
4 hospitalized. That was up to the doctor.

5 Q And in someone's home, um, is it typical that a --  
6 someone in their home would have to care for 15 to 17  
7 dementia residents by themselves?

8 A They weren't by themselves, and these residents were  
9 capable of being in that, um, assisted living environment  
10 and being cared for well. I -- I don't recall there being  
11 any other problems. Um, they seemed to be quite happy there  
12 and their families were happy with their care.

13 Q Did you tell the families what the staffing ratios  
14 were?

15 A I do not know what was discussed with -- when they,  
16 um, came on board. We followed what the law required.

17 Q When you say "we followed what the law required",  
18 that's not really responsive to my question.

19 A Okay.

20 Q My question was, did you tell the families what the  
21 staffing ratios were?

22 A Personally I did not.

23 Q Did you tell Mrs. Boice's son that on the night shift  
24 there would be only one person for 17 dementia residents in  
25 the Memory Care Unit?

26 A I wouldn't have said that, no.

27 Q Did you tell them on some nights it would only be two  
28 people in the whole building for 80 residents?

1 A It's -- there is no staffing ratio for assisted  
2 living.

3 MS. CLEMENT: Move to strike as non-responsive, your  
4 Honor.

5 THE COURT: Granted.

6 Q (By MS. CLEMENT) Did you -- do you need the question  
7 read back?

8 A No.

9 Q Can you answer the question, please?

10 A Can you ask it again, please?

11 THE COURT: Brooke, why don't you go ahead and read it  
12 back?

13 (Whereupon the last question was read back as requested.)

14 THE WITNESS: No.

15 Q (By MS. CLEMENT) When you became a resident care  
16 director you learned from Nancy Cordova that you were  
17 required to comply with Title 22 regulations governing  
18 residential care facilities for the elderly; true?

19 A Correct.

20 Q But Emeritus didn't give you any training as to what  
21 those regulations required; true?

22 MR. REID: Asked and answered, your Honor.

23 THE COURT: Sustained.

24 MS. CLEMENT: Your Honor, at this time Plaintiffs  
25 would seek to play deposition testimony page 258, lines 14  
26 through 259.

27 MR. REID: Where did you want to end it? I didn't  
28 hear it. I'm sorry.

1 MS. CLEMENT: 25.

2 MR. REID: Down to the end of the page?

3 THE COURT: 25. Line 25. 259.

4 MR. REID: Okay. Oh, 259?

5 THE COURT: Yes.

6 MR. REID: Um, page 259 ends on a question, there is  
7 no answer.

8 THE COURT: Ms. Clement, could you confirm please  
9 where you want the, um, portion to end?

10 MS. CLEMENT: Oh, I'm sorry. It ends at line 20. I  
11 was right. 259, line 20.

12 MR. REID: No objection, your Honor.

13 THE COURT: Okay.

14 MS. CLEMENT: Sorry.

15 **(The following video excerpt was then played in open court:)**

16 Q The next essential function of business management is  
17 manage the administrative duties of the wellness department.  
18 So I guess that begs the question, what were the  
19 administrative duties of the wellness department?

20 **(Video stopped.)**

21 MR. REID: Your Honor, this isn't the section.

22 THE COURT: Hold on.

23 **(The following video excerpt was then played in open court:)**

24 Q And then under "regulatory", the first item was  
25 "remain abreast of current state regulations and ensure  
26 compliance with regulatory processes such as state OSHA and  
27 EPA." Did you get any training whatsoever when you started  
28 as the resident care director in what the state -- current

1 state regulations were that governed Emeritus Emerald Hills?

2 A I had an understanding that they were governed by  
3 Title 22, but that was -- I had no formal training. That  
4 information was conveyed to me by the executive director.

5 Q Okay. So was it basically that the executive director  
6 told you Emeritus Emerald Hills is governed by Title 22, but  
7 you didn't get any training on what Title 22 meant?

8 A I did not. I actually was told that RCFE is a class,  
9 I believe, that people who are in executive positions with  
10 assisted living attend and that I didn't need to attend it.

11 Q And was it Nancy Cordova who told you that?

12 A Yes.

13 Q Do you think that it would have been difficult -- or  
14 strike that. Do you think it would have been impossible for  
15 for you to ensure compliance by the staff you were  
16 overseeing with the regulatory process of Title 22 if you  
17 didn't know what Title 22 said?

18 A I think that's true of any case. If you're not  
19 trained, you don't know.

20 **(Video stopped.)**

21 Q (By MS. CLEMENT) Now, isn't it also true that when  
22 you were working at Emerald Hills in September of 2008, um,  
23 you had not been provided any training prior to that time on  
24 how to perform a resident assessment using the Emeritus  
25 tools; true?

26 A Prior to when?

27 Q Prior to Mrs. Boice's coming to Emerald Hills in  
28 September of 2008?

1 A I did know how to do an assessment.

2 Q Um, my question was, you weren't provided any training  
3 on how to use the Emeritus evaluation tool?

4 A I was. I knew how to do that, the assessment  
5 paperwork and the Vigilant, um, computer program as well.

6 Q Do you remember telling me in your deposition that,  
7 um, when we went over all of the, um, holes in Mrs. Boice's  
8 evaluation that you hadn't gotten any training on how to do  
9 that evaluation?

10 A I don't recall.

11 Was that the first deposition?

12 Q I don't remember if it was the first or second.

13 A I don't either, but I do know that when the first  
14 deposition took place I had not thought about Emerald Hills  
15 in four years or more, so it was all being brought up new to  
16 my. And, um, I have had a chance to go over a lot of  
17 documentation and, of course, things have come to my mind,  
18 um, not that it's new information, just that I hadn't  
19 thought about it in over four years.

20 So when you ask me a question, you know, there may  
21 have been a difference in my level of remembering from the  
22 first deposition that was a complete surprise, um, of  
23 something I hadn't thought about in a long time to, um,  
24 having brought those memories up, and I still don't remember  
25 everything.

26 Q And these new memories are since you have been meeting  
27 with your new lawyer, Mr. Reid; true?

28 MR. REID: Objection, your Honor, it's argumentative



1 and it's also attorney-client.

2 THE COURT: Sustained.

3 Q (By MS. CLEMENT) Now, you knew at the time that  
4 Mrs. Boice was admitted into the facility that the  
5 evaluation was supposed to be done before Emeritus agreed to  
6 accept that resident; true?

7 A Generally speaking.

8 Q "Generally speaking", what does that mean?

9 A That means that, um, there have been times that an  
10 assessment would be done at their home, if they were new,  
11 coming in, if they were coming from another facility, as I  
12 believe she was, she was in assisted living already that,  
13 um -- and she had just had a doctor's, um, 601 done, or 602,  
14 excuse me, that she was appropriate. And I also examined  
15 her on that day and found her to be appropriate.

16 Q Oh, you examined her on that date. How much time did  
17 you spend with Mrs. Boice on September 12th, 2008, after her  
18 furniture had been moved into the facility?

19 A I don't recall.

20 Q How long did Mrs. Boice have to wait for you to show  
21 up to do her evaluation?

22 A I don't recall that at all.

23 Q Isn't it true that she had to wait four hours for you  
24 because you weren't in the building?

25 A I don't know. I don't remember that day.

26 Q Isn't it true that, um, Mrs. Boice did not have a  
27 current physician's report pursuant to the policies of  
28 Emeritus at the time that you did your evaluation of

1 Mrs. Boice?

2 A She didn't have one within a month or two. I believe  
3 it was three months old. I -- I don't remember.

4 Q Well, Erik, why don't you pull up for us Exhibit 2,  
5 page 19?

6 When did you first see Mrs. Boice's, um, 602  
7 physician's report?

8 A I don't recall.

9 Q Was it after she was admitted?

10 A No, I don't think so.

11 Q Well, how do you know if you don't remember?

12 A Well, I don't think I would admit her if I didn't have  
13 a -- a 602. That was against policies.

14 Q Okay. And, um, Mrs. Boice's 602, um, do you know what  
15 facility got the 602 for Mrs. Boice?

16 A The one that is up there, the Palms.

17 Q Okay. So that wasn't Emeritus; true?

18 A True.

19 Q And that 602 looks like it was faxed the afternoon  
20 before Mrs. Boice was admitted; true?

21 A That is what it looks like, yes.

22 Q But Mrs. Boice had already been accepted as a resident  
23 and paid?

24 A That's not my concern. I -- I did the assessment to  
25 allow someone in and if I didn't feel that they qualified, I  
26 would not agree to it.

27 Q Did you ever turn anyone away?

28 A Absolutely.

1 Q How many people?

2 A You know, I can only recall one that stood out.  
3 Typically I think, um, the things that are most unusual are  
4 what stand out in your memory, not the things that are  
5 day-to-day. I do remember a resident or a -- someone who  
6 wanted to come in that I turned away.

7 Q Okay. And what were the circumstances there? Please  
8 don't tell us the name of the resident.

9 A I won't. I don't remember her name. She was not a  
10 resident. She was a person who had a long history of  
11 diagnosed severe mental illness and, um, that was against  
12 the policies there to admit her or to allow her to become a  
13 resident.

14 Q Well, there were other residents however that were  
15 seeking admission or their families were seeking admission  
16 for them to come to Emerald Hills that you did have concerns  
17 about; true?

18 A Yes.

19 Q And you voiced those concerns; true?

20 A I generally would.

21 Q And even though you had concerns about the level of  
22 care needed for a resident you still agreed to let those  
23 residents come into the facility; true?

24 A I don't recall who they are. I don't recall those  
25 particular circumstances. But if I had concerns, as a nurse  
26 I would, you know, discuss it with my supervisors and  
27 superiors to make sure that this was okay to do. Um, I'm  
28 not the type to let something go past me.

1 Q Why did you leave Emeritus?

2 A I went to work in Hospice because I saw what great  
3 work they were doing at Emeritus -- at Emerald Hills.

4 Q Isn't it true that you were overwhelmed by your job at  
5 Emeritus at Emerald Hills?

6 A You know, I saw that comment about being overwhelmed,  
7 and I will tell you that being in an environment like an  
8 assisted living, these people are very active, they do  
9 crafts -- not the memory care, but the other part, the  
10 assisted living, um, they are very active people and they  
11 take up a lot of your day because they want to chat, they  
12 want to talk, they want to find out what's going on. So  
13 very often at the end of the day there wouldn't have been  
14 time to do some paperwork, and Nancy and I would -- the  
15 executive director and I would stay late and do paperwork.

16 Q Isn't it true that you testified in your deposition  
17 that you were overwhelmed?

18 A I did. It was an overwhelming day taking, you know --  
19 interacting with all of these people and, um, all of their  
20 activities and their families during the regular working  
21 hours. So very often we would stay after. It was a long  
22 day.

23 Q Isn't it true that you told both your executive  
24 director and the regional nurse that you were overwhelmed?

25 A I probably did (laughing). I don't recall it, but I  
26 may have.

27 MS. CLEMENT: At this time, your Honor, um, the  
28 Plaintiffs would seek to play deposition -- two excerpts,

1 your Honor, page 218, lines 4 through 15 and 218, line 16  
2 through 21.

3 MR. REID: No objection, your Honor.

4 THE COURT: Okay.

5 **(The following video excerpt was then played in open court:)**

6 Q Did you feel at times overwhelmed by all of the things  
7 you were expected to do as the resident care director?

8 A Yes, I did feel overwhelmed. There were many evenings  
9 I worked until 7:00 p.m. and didn't seem to be able to  
10 complete everything that needed to be done.

11 Q Did you talk to anyone, other than perhaps your  
12 family, about your concerns that you didn't have enough  
13 training and you felt overwhelmed by your job duty?

14 A I spoke to my executive director and also the regional  
15 nurse. I think I remember her name was Doris Marshall. I  
16 think I said Delores earlier.

17 **(Video stopped.)**

18 MR. REID: Your Honor, can we approach for one second?

19 THE COURT: Come on up. Ms. Clement.

20 (Sidebar conference was held.)

21 Q (By MS. CLEMENT) Um, now, when you told your regional  
22 nurse, Doris Marshall, that you were feeling overwhelmed  
23 about your job duty, what was her response?

24 A I don't remember.

25 MS. CLEMENT: At this time, your Honor, Plaintiffs  
26 would seek to play page 218, line 7 through 14.

27 THE COURT: Could you give me the first couple of  
28 words on line 7 and the last couple of words on line 14,

1 please?

2 MS. CLEMENT: Yes, your Honor. Thank you for the  
3 reminder.

4 Did you feel --

5 (Discussions were had between attorneys.)

6 THE COURT: Ladies and gentlemen, we are just checking  
7 that the line and page numbers are matching up between the  
8 actual transcript and what's being shown on the screen, so  
9 thank you for your patience.

10 MS. CLEMENT: I was right on the page and line but --  
11 sorry, your Honor. I apologize.

12 It is truly 218, lines 7 through 14 but something is  
13 going wrong on Erik's -- with his transcript. The page is  
14 off by a page. I don't know what the problem is.

15 THE COURT: Okay. So are we --

16 MS. CLEMENT: He is going to sort it out. Yes, it's  
17 correct.

18 THE COURT: Okay.

19 MR. REID: I don't have an objection to that section,  
20 your Honor.

21 THE COURT: Okay. Thank you.

22 **(The following video excerpt was then played in open court:)**

23 Q And what was the regional nurse's response to your  
24 concerns about lack of training and feeling overwhelmed by  
25 the job duties?

26 A Generally she would just let me express my concerns  
27 and then assure me that something -- training would be put  
28 together.

1                                   **(Video stopped.)**

2           Q        (By MS. CLEMENT)   And isn't it true that other  
3       directors expressed concerns, um, to you of being  
4       overwhelmed?

5           A        Not that I recall.

6           Q        Do you remember Nancy Cordova expressing concerns to  
7       you?

8           A        Yes.

9           Q        That she felt overwhelmed?

10          A        The executive director, Nancy, yes.

11          Q        And staff came to you and told you that they were  
12       overwhelmed?

13          A        They did.

14          Q        And on those two days a week that you were going over  
15       to the Roseville facility, who would be the nurse at  
16       Emeritus to take your place?

17          A        There was none.   There was none required.   And that  
18       was for a very short period of time.

19          Q        Isn't it true that the staff expressed concerns to  
20       you, the caregiving staff, that there wasn't enough staff on  
21       the floor to meet the residents' needs?

22          A        Did they complain to me?   Yes.

23          Q        Isn't it true that the staff expressed to you that  
24       there wasn't enough staff on the floor to meet the  
25       residents' needs?

26          A        Yes.

27                MS. CLEMENT:   At this time, your Honor, the Plaintiffs  
28       would like to play that story board clip, um, 256, 23 to

1 257, 1.

2 MR. REID: No objection, your Honor.

3 THE COURT: Okay. Thank you.

4 **(The following video excerpt was then played in open court:)**

5 Q And did the staff that came to you tell you that they  
6 felt that there wasn't enough staff on the floor to meet the  
7 residents' needs?

8 A Yes.

9 **(Video stopped.)**

10 Q (By MS. CLEMENT) And you yourself had serious  
11 concerns that there was not enough staff to meet the  
12 residents' needs; true?

13 A I don't think so, no. They had plenty of time.

14 MS. CLEMENT: At this time, your Honor, Plaintiffs  
15 would seek to play page 251, lines 13 through 18. First  
16 words are, Did you, um, and last words are, To be staffed.

17 MR. REID: No objection, your Honor.

18 THE COURT: Okay. Thank you.

19 **(The following video excerpt was then played in open court:)**

20 Q Did you have any concerns about staff scheduling?

21 A Yes. I was concerned that there wasn't enough  
22 staffing, but it wasn't my choice as to how many people were  
23 allowed to be staffed.

24 **(Video stopped.)**

25 Q (By MS. CLEMENT) In fact, you did not believe that  
26 one caregiver on the overnight shift in the Memory Care Unit  
27 was sufficient, did you?

28 A You know, I don't recall what I told you on the



1 deposition. It -- it is in that there were always more than  
2 one person in the building, there was usually three, and  
3 they could come over and help on that side. I -- you know,  
4 people were sleeping. It was very unusual for anything to  
5 occur during the night.

6 Q How many noc shifts did you work when Mrs. Boice was a  
7 resident?

8 A None.

9 Q So you have no idea what was going on on the noc shift  
10 when Mrs. Boice was a resident; true?

11 A True.

12 Q And isn't it true that you never believed that one  
13 caregiver on the overnight shift in the Memory Care Unit was  
14 sufficient?

15 MR. REID: That is asked and answered, your Honor.

16 THE COURT: It wasn't a firm answer on that she didn't  
17 recall.

18 Are you asking her now?

19 MS. CLEMENT: Let me -- let me see if I can do a  
20 better job of this, your Honor.

21 THE COURT: Okay.

22 MS. CLEMENT: I would seek to play this witness's  
23 testimony from her deposition, page 336, line 25 through  
24 337, line 7. It starts with, Did you feel, and ends with,  
25 That was the common practice.

26 MR. REID: It starts at 22, your Honor, and I have no  
27 objection.

28 THE COURT: All right.

1 MS. CLEMENT: I think the problem, your Honor, is that  
2 I'm looking at the mini transcript and there seems to be  
3 some problem in that numbering. I'll get it sorted out.

4 THE COURT: All right. Thank you.

5 MS. CLEMENT: Thank you, Judge.

6 **(The following video excerpt was then played in open court:)**

7 Q Did you feel that one caregiver on the night shift in  
8 the MCU, the Memory Care Unit, was sufficient?

9 A Personally, no, I did not think that was sufficient;  
10 however, that was the common practice.

11 **(Video stopped.)**

12 Q (By MS. CLEMENT) So that was the second day of your  
13 deposition; true?

14 A I don't know. I don't know what I wore those two  
15 days. I wore the white jacket one time, and I wore that  
16 outfit one other time. I don't know which was which.

17 MS. CLEMENT: I think we can stipulate June 20th,  
18 2011, was the second day of her deposition.

19 Are you willing to do that?

20 MR. REID: I will stipulate to that, your Honor.

21 THE COURT: Okay. Could Counsel approach, please, for  
22 a moment? And those of you who are working on the comments,  
23 come up as well, please.

24 (Sidebar conference was held.)

25 THE COURT: All right. Ms. Stevenson, we are going to  
26 stop with you at this point. We need you back tomorrow  
27 morning at nine o'clock.

28 THE WITNESS: Okay.

1 THE COURT: We will see you then. You may step down.

2 THE WITNESS: Thank you.

3 THE COURT: Counsel, be seated for a moment, please.

4 All right.

5 Ladies and gentlemen, I wanted to advise you of  
6 something that may occur during portions of this trial and  
7 to assuage any concerns that you may have.

8 During portions of this trial a camera may be present  
9 to record portions of the proceedings. You personally as  
10 jurors will not be recorded. Only myself, as the judge, any  
11 witness who might be on the stand and any of the attorneys  
12 may, in fact, be on the recording. At no time -- please do  
13 not speculate as to why the camera is present or the purpose  
14 of the recording. Please do not let the presence of any  
15 camera distract you from your duties as jurors.

16 It's my anticipation that if the recordings are going  
17 to occur, you'll find somebody standing in the far corner  
18 back over there with a camera trained towards me or the  
19 witness or the attorneys. And there will be no recording  
20 out in the hallways either, so none of your comings and  
21 goings, nothing that would identify any of you as jurors.  
22 Okay. All right. Thank you.

23 With that, please leave your notebooks on the chairs.  
24 Remember the admonitions. I will see you tomorrow morning  
25 at nine o'clock. We are in recess.

26 **(The following proceedings were held in open court, outside**  
27 **the presence of the jury:)**

28 THE COURT: Okay. I just want the record to reflect

1 prepared for at the time of their depositions, but we have  
2 had witnesses come and testify about stuff that --

3 THE COURT: You are asking me whether or not you can  
4 inform your expert of things that happened at trial?

5 MS. CLEMENT: Yes, the transcript.

6 THE COURT: I don't think you need to ask me that  
7 question.

8 MS. CLEMENT: Well, I'm just, you know, trying to be  
9 ultra cautious, your Honor. I don't want to be accused of  
10 something.

11 THE COURT: Do you wish to make any comment, Counsel?

12 MR. REID: No, your Honor.

13 THE COURT: Okay. As far as I know, the Evidence Code  
14 says you can inform your expert of things that happened at  
15 trial. Okay.

16 Are we ready? Let's bring in the jury in. And I am  
17 on the stand right now so don't need to worry about it. I  
18 mean, I'm on the bench.

19 **(The following proceedings were held in open court, in the**  
20 **presence of the jury:)**

21 THE COURT: Mr. Lincoln, we have a witness,  
22 Ms. Stevenson, who should be out there. Bring her in,  
23 please.

24 You can all be seated. Thank you.

25 You can have a seat.

26 THE WITNESS: Thank you.

27 THE COURT: Good morning. And I simply remind you  
28 that you remain under oath from yesterday.

1 THE WITNESS: Yes.

2 THE COURT: Okay. Thank you.

3 COURT ATTENDANT: All rise.

4 THE COURT: No. We are okay now. I confused you. I  
5 apologize.

6 Okay, Counsel.

7 MS. CLEMENT: Thank you, your Honor.

8 CONTINUED TESTIMONY OF

9 MARGARET PHALEN STEVENSON, Witness called under Evidence  
10 Code 776 on behalf of the Plaintiffs,

11 RESUMED CROSS-EXAMINATION

12 By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
13 the Plaintiffs:

14 Q Ms. Stevenson, did you look at anything overnight to  
15 prepare you for your testimony today?

16 A No.

17 Q Um, now, Ms. Stevenson, um, what exactly did you chart  
18 on in Mrs. Boice's record?

19 A I don't recall.

20 Q Well, you spent a lot of time reviewing it; true?

21 A Um, I have reviewed it.

22 Q And so --

23 A It's --

24 Q -- the only document --

25 A Okay.

26 Q -- that you found that you actually did while  
27 Mrs. Boice was a resident at the facility, um, regarding her  
28 care was the initial evaluation that was done the day that

1 she was admitted; true?

2 A True. And some care alerts or whatever was in there.  
3 You know, it's not a medical chart so it's not --

4 MS. CLEMENT: Move to strike as non-responsive, your  
5 Honor.

6 THE COURT: Sustained. Granted.

7 Q (By MS. CLEMENT) Um, the care alert that you  
8 documented on --

9 A Uh-huh.

10 Q -- that was -- you documented on that after Mrs. Boice  
11 left the facility; true?

12 A True.

13 Q So my question was, while she was a resident at  
14 Emeritus the only documentation that you did was the  
15 evaluation that was done the day she was admitted to the  
16 facility; true?

17 A True.

18 Q Now, you -- there was no nurse's notes that you  
19 created; true?

20 A Not that I can recall.

21 Q There is no care plan or service plan that you  
22 created; true?

23 A Um, not in the chart. The Vigilant is a service plan.

24 Q Well, excuse me, Ms. Stevenson, you testified  
25 yesterday that you don't know if you did that Vigilant and  
26 that is what you testified to in your deposition; true?

27 A True.

28 Q That Vigilant plan isn't even dated on the print date

1 during Mrs. Boice's lifetime; true?

2 A I don't know. I don't recall.

3 Q Wasn't in the chart; true?

4 A I don't think so, but I don't have a recollection of  
5 the chart.

6 Q Um, now, you didn't provide any hands-on care to  
7 Mrs. Boice, did you?

8 A No, I did not.

9 Q In fact, you almost never provided any hands-on care  
10 to the residents; true?

11 A That's true.

12 Q And you didn't do any wound care on the residents;  
13 true?

14 A Except for placing an occasional Band Aid, that's  
15 true.

16 Q And you knew that the med techs shouldn't be doing  
17 wound care because they weren't licensed; true?

18 A True.

19 Q Yet you told Kaiser home health when they came out to  
20 care for Mrs. Boice that you would be doing the wound care  
21 treatments; true?

22 A I don't have any recollection of that. I -- if you  
23 have a document that says I did, I would like to see it.

24 Q You haven't already been shown that document?

25 A I can't recall it right at this moment.

26 Q Um, in fact, going back to this issue of care plans or  
27 service plans, um, you didn't even know that you were  
28 supposed to be doing service plans until late into your

1 tenure at Emeritus; true?

2 A No, that's not true. I had done, um -- worked in the  
3 Vigilant computer before that.

4 Q Isn't it true that you did not understand that every  
5 resident of Emeritus was supposed to have a care plan until  
6 late in your tenure there?

7 A That's not true. I did understand that earlier.

8 MS. CLEMENT: Okay. At this time, your Honor,  
9 Plaintiffs would seek to play page, um, 306, starts with,  
10 Was it your understanding, ends with, February of '09.

11 MR. REID: No objection, your Honor.

12 THE COURT: Okay.

13 MS. CLEMENT: Could you get the lights for us, James?  
14 Thank you. Both of them. Thank you, sir.

15 **(The following video excerpt was then played in open court:)**

16 Q Was it your understanding that every resident at  
17 Emeritus -- was it your understanding that every resident at  
18 Emeritus was supposed to have a service plan?

19 A Late in my tenure there, yes, I did find that out.

20 Q And refresh my recollection, did you leave in March of  
21 '09?

22 A I -- I think it was February.

23 **(Video stopped.)**

24 MS. CLEMENT: Thank you, James.

25 Q (By MS. CLEMENT) Now, when a resident has a change in  
26 condition in a residential care facility for the elderly, or  
27 assisted living facility, um, they are supposed to be  
28 notifying the family and the physician; true?



1 A Correct.

2 Q And ultimately it was your job to notify the family  
3 and the physicians when the residents had a change in their  
4 condition; true?

5 A Ultimately, yes.

6 Q Um, now, when there was a change in condition to the  
7 resident in a Memory Care Unit it was your understanding  
8 that the responsibility of communicating to the doctors was  
9 the family's; true?

10 A It was the family's responsibility to take care of it.  
11 We didn't transport people for any kind of medical care, um,  
12 but we would notify family and we would notify doctor by  
13 fax.

14 Q Isn't it true that you, um, at the time that you  
15 worked at Emeritus, you thought that you only communicated  
16 with doctors at the request of the family?

17 A I don't recall specifically.

18 Q Isn't it true that you thought you were only supposed  
19 to notify the physician if there was a change in medication  
20 or a misunderstanding regarding the medication?

21 A You know, I don't recall. I -- I -- I know generally  
22 we could send them a fax whenever we wanted, I mean.

23 Q So isn't it true that you didn't typically communicate  
24 with the physicians?

25 A We did. We sent a lot of faxes to physicians.

26 Q Not, we, the --

27 A Okay

28 Q -- question is you.

1 A Me?

2 Q Isn't it true that you did not communicate with the  
3 physicians?

4 A No, not -- not a lot. I did, but not a lot.

5 MS. CLEMENT: At this time, your Honor, Plaintiffs  
6 would seek to play page 162, lines 18 through 164, line 1.

7 MR. REID: No objection, your Honor.

8 THE COURT: Thank you.

9 **(The following video excerpt was then played in open court:)**

10 Q When there was a change in condition of a resident in  
11 the Memory Care Unit, whose responsibility was it to  
12 communicate with doctors when needed?

13 A Family.

14 Q If the family didn't -- wasn't told about the change  
15 in condition, whose responsibility would it to be to  
16 communicate with doctors when needed?

17 A Because we weren't a medical model, typically we only  
18 communicated with doctors at the request of the family or if  
19 there was a need for a change in medication or a  
20 misunderstanding about a medication.

21 Q In order for the family to communicate with the doctor  
22 about a change in condition, the family would have to have  
23 known?

24 A That would make sense.

25 Q Okay. So if the family didn't know about a change in  
26 condition, whose responsibility was it to notify the  
27 physician of the residents's change in condition?

28 A We typically did not communicate with the physicians,

1 except if there was ongoing conversation initiated by the  
2 family. So if the family wasn't notified, I don't know if  
3 anyone would have contacted the physician.

4 (Video stopped.)

5 Q (By MS. CLEMENT) Was that your understanding of Title  
6 22 when you worked there, Ms. Stevenson, that you didn't  
7 have to contact a physician and family when there was a  
8 change in condition?

9 A Well, we did contact the family when there was a  
10 change in condition.

11 Q Where do you see anywhere in that chart that the  
12 family was contacted about Mrs. Boice going from walking  
13 without -- to not walking?

14 A I don't know. I --

15 Q Did you see anywhere in the chart where the family was  
16 notified that Mrs. Boice had more frequent and intense pain  
17 in her right foot and could no longer bear weight?

18 A I don't see any written communication, no.

19 Q Do you see any communication in the chart that  
20 Mrs. Boice's family was notified that Emeritus failed to  
21 comply with the physician's order regarding taking her to  
22 get a x-ray of her right foot and ankle?

23 A It wasn't an order for us. It wasn't an order for  
24 Emeritus to take her for an x-ray.

25 Q Well, who was it an order for, Mrs. Boice, was she  
26 supposed to take herself?

27 A Her husband lived there.

28 Q Oh. And where does it say that her husband was

1 notified of that order?

2 A It doesn't say. There is no documentation.

3 Q All right. Now, you knew -- you told us you read  
4 Title 22 front to back yesterday, correct?

5 A I did, back then.

6 Q Yeah. But in your deposition you didn't -- you didn't  
7 have any training on it; remember that?

8 MR. REID: That is asked and answered, your Honor.

9 THE COURT: Sustained.

10 Q (By MS. CLEMENT) So knowing Title 22 back to front  
11 you would have known that you, as the nurse, part of the  
12 Emeritus team, were required to do a reappraisal of  
13 Mrs. Boice whenever she had a change in her condition; true?

14 MR. REID: I'm going to object to that. I think it  
15 misstates the law and assumes facts not established.

16 THE COURT: Could you refer us, please, to a section  
17 of Title 22 so that I could review that, please?

18 MS. CLEMENT: Sure. You know what, your Honor, I  
19 don't need to do that.

20 THE COURT: Okay.

21 MS. CLEMENT: Thanks.

22 Q (By MS. CLEMENT) Um, now, was it part of your duties  
23 to do reappraisals of the residents when they had a change  
24 in condition?

25 A Was it part of my duties?

26 Q Yeah.

27 A Um, yes.

28 Q Do you know why there is no reappraisals by you for

1 Mrs. Boice?

2 A I don't know that there aren't. There's Vigilant  
3 appraisals in there. I'm -- I'm not sure if I did them. I  
4 don't know who else would have done them. There is no name  
5 on it and I don't recall it.

6 Q And you don't know if those Vigilant programs were done  
7 at the time Mrs. Boice was a resident or if they were done  
8 some other time; true?

9 A I wouldn't remember.

10 Q Now, um, as part of your responsibilities were you  
11 supposed to be doing audits of the medication administration  
12 records for Mrs. Boice?

13 A For all of the residents that we, um, helped with  
14 medication.

15 Q You mean the residents in the Memory Care Unit that  
16 you were administering medication to?

17 A We were not administering.

18 Q Oh. Could Mrs. Boice, based upon your initial  
19 evaluation, tell you she wanted a PRN medication or not?

20 A PRN medications can be indicated in non verbal ways.  
21 It's very common.

22 MS. CLEMENT: Move to strike as non-responsive.

23 THE COURT: Overruled.

24 Q (By MS. CLEMENT) Could Mrs. Boice tell you if she  
25 wanted a PRN medication?

26 A She could not speak it, no.

27 Q And were you the one assessing Mrs. Boice to see if  
28 she needed the PRN medication?

1 MR. REID: That assumes facts not established, your  
2 Honor.

3 THE COURT: Overruled.

4 THE WITNESS: Um, usually not. It's usually a med  
5 tech or someone there in the evening.

6 Q (By MS. CLEMENT) And were med techs qualified to do  
7 assessments?

8 A They were qualified to read a medical chart in their  
9 training. Yes, they were.

10 Q Oh, that 16-hour training they got, is that what  
11 you're referencing?

12 A Uh-huh.

13 Q Is that a "yes"?

14 A Yes.

15 Q How much training did you get as a nurse?

16 A As a nurse overall?

17 Q How much training did you get in school before they  
18 let you pass -- pass out medications?

19 A A year. No, not even a year. I mean, when I was on  
20 the floor, probably six months.

21 Q You didn't go to school first to become a nurse?

22 A Well, you do clinicals and classes at the same time.

23 Q And when you went to nursing school, how long did you  
24 go to school?

25 A Four years.

26 Q And did you ever audit Mrs. Boice's medication  
27 administration record, her MARs?

28 A I don't specifically recall.

1 Q Any -- any indication on the MARs that you did an  
2 audit?

3 A Not that I saw.

4 Q Have you been shown any documents that indicate that  
5 you did an audit?

6 A Not that I can recall.

7 Q Do you have any explanation as to why Mrs. Boice  
8 missed her morphine medication six times?

9 MR. REID: That assumes facts not established, your  
10 Honor. It's argumentative.

11 THE COURT: Sustained.

12 Q (By MS. CLEMENT) Do you have any explanation as to  
13 why Mrs. Boice is not documented as she received medication  
14 in her record for multiple days?

15 A No, I don't.

16 Q Was your training as a nurse not documenting, not  
17 done?

18 A Pardon me?

19 Q Was your training as a nurse not documented means not  
20 done?

21 A Correct.

22 MR. REID: That's vague.

23 THE COURT: Overruled. And she answered.

24 Q (By MS. CLEMENT) Um, as a nurse when you first came  
25 to Emeritus you didn't have any experience working in  
26 assisted living facilities; true?

27 A That's true.

28 Q And you didn't have any experience supervising med

1 techs or caregivers; true?

2 A I had some. Um, at the adult day center that I worked  
3 prior to that we did have staff there.

4 Q Do you recall testifying at your deposition that you  
5 didn't have any experience supervising med techs and  
6 caregivers?

7 A Not med techs, but there were caregivers at the adult  
8 day center.

9 Q So your prior experience specifically related to  
10 working with, um, elder care, just that limited population,  
11 was at the assisted -- at the -- excuse me -- adult day care  
12 center; true?

13 A No. Prior to that I worked in a hospital in cardiac  
14 care.

15 Q Okay. Was that limited specifically to elderly  
16 people?

17 A Pretty much.

18 Q Okay. And, um, how long did you work at the adult day  
19 care center?

20 A I was only there about three or four months.

21 Q Why did you leave?

22 A Because the board of directors, due to lack of funding  
23 in our county, closed down the adult day center.

24 Q So your experience at the adult day care center were  
25 with residents who didn't come in with any illnesses; true?

26 A No, they did not have, um -- they were not ill like a  
27 cold. They had other -- brain trauma, um, Parkinsons, they  
28 had cerebral palsy. They usually had some sort of brain



1 injury or neurological injury.

2 Q So you -- you tell us that you had experience with,  
3 um, the elderly before you came to Emeritus; true?

4 A Yes.

5 Q And you had experience with people with Alzheimer's  
6 type dementia; true?

7 A Yes.

8 Q So you know that people with Alzheimer's type dementia  
9 have poor safety awareness; true?

10 A True.

11 Q They are easily disoriented; true?

12 A Yes.

13 Q They have behavior problems at times?

14 A Sometimes.

15 Q They have the inability to communicate their needs at  
16 times?

17 A At times.

18 Q They are dependent on others to meet their needs?

19 A Yes. Their activities of daily living, yeah, make  
20 their food, um, change them as necessary, help them to get  
21 in the shower.

22 Q Things they are depending on people in order to meet  
23 their needs every day; true?

24 A Yes.

25 Q Make sure that they get food?

26 A Uh-huh.

27 Q Yes?

28 A Yes.

1 Q Make sure that they get fluids?

2 A Yes.

3 Q Make sure that they are clean?

4 A Yes.

5 Q And residents with Alzheimer's type dementia need  
6 medication administration; true?

7 A They have medications and they are helped with their  
8 medications.

9 Q Well, in Mrs. Boice's case in particular, would it be  
10 your practice before admitting her to Emeritus on September  
11 12th, 2008, to have read her physician's report?

12 A Yes.

13 Q Okay. So, Erik, can you put that up, that's Exhibit  
14 Number 2?

15 James, could you get the lights for us, please?

16 Exhibit 2, page 20. Um, now, part of Dr. Awan's June  
17 3rd, 2008, physician's report or 602 --

18 A Uh-huh.

19 Q -- done for the Palms, um, indicates what her primary  
20 diagnosis was, which was Alzheimer's type dementia; true?

21 A True.

22 Q And she also wrote that Mrs. Boice needs to be  
23 administered her meds; true?

24 A That is what is written, yes.

25 Q And then on page 21 she wrote that Mrs. Boice needed a  
26 walker and assistance to walk; true?

27 A True.

28 Q Did you develop a care plan for Mrs. Boice to instruct

1 the caregivers at Emeritus that she needed to have  
2 assistance to walk with her walker?

3 A I don't recall specifically, but there were other  
4 people that needed assistance and the caregivers did know  
5 how to assist them.

6 Q How do you know that?

7 A How do I know that?

8 Q Yes.

9 A I saw it.

10 Q Okay. Do you know what training the caregivers had?

11 A Well, when we would bring someone on they would, um,  
12 go through all of the classes they had to take, um, for  
13 onboarding and then they would, um, do on-the-job training  
14 with another caregiver that had the same job.

15 Q Isn't it true that in your tenure -- you can get the  
16 lights for us, James.

17 Isn't it true that in your tenure as the resident care  
18 director at Emeritus you were unable to assure that the  
19 Memory Care Unit staff was trained per the Department of  
20 Social Services guidelines?

21 A I'm not aware of what you're talking about.

22 Q Isn't it true that during your tenure as resident care  
23 director you were unable to conduct in-service meetings to  
24 assure that the necessary training was provided to the  
25 staff?

26 A Not to my knowledge.

27 MS. CLEMENT: Okay. At this time, your Honor, I would  
28 like to play 337, lines 23 through 338, line 11.

1 MR. REID: I think that has not --

2 MS. CLEMENT: It's line 20.

3 MR. REID: I apologize.

4 Through which line?

5 (Discussions were had between attorneys.)

6 MR. REID: No objection, your Honor.

7 THE COURT: All right. Thank you.

8 MS. CLEMENT: James, could you get the lights for us,  
9 please? Thank you.

10 **(The following video excerpt was then played in open court:)**

11 Q In your tenure as the resident care director, were you  
12 able to ensure that all of the Memory Care Unit staff was  
13 trained per the Department of Social Services guidelines?

14 A No, I was not able to do that.

15 Q During your tenure as the resident care director, were  
16 you able to conduct in-service meetings to ensure that all  
17 necessary training was provided to the staff?

18 A No.

19 **(Video stopped.)**

20 MS. CLEMENT: Thank you, James.

21 Q (By MS. CLEMENT) Now, um, Mrs. Boice's assessment --  
22 she wasn't the only resident you assessed; true?

23 A True.

24 Q And you did that evaluation for every resident during  
25 your tenure when they moved in; true?

26 A I don't know if I did it for every resident. It  
27 didn't need to be me who did it. It's not a medical  
28 assessment, it was an appraisal whether they met the

1 specifics to come into an assisted living facility.

2 Q Well, weren't you of the understanding that the  
3 reason -- well, you did understand the evaluation needed to  
4 be -- take place before the resident came to the facility;  
5 true?

6 A True.

7 Q And the reason for that is Emeritus needed to know  
8 whether or not they had the staff to meet the needs of the  
9 resident; true?

10 A And that the resident was appropriate, true.

11 MS. CLEMENT: Now, um, at this point I would like to,  
12 um, move into evidence -- oh, no, I would like to ask the  
13 witness to grab Exhibit Number 26 behind her.

14 **(Joint Exhibit 26 was marked for identification.)**

15 THE WITNESS: 26? Okay. Sorry. Okay. Page 26,  
16 here? Yes.

17 Q (By MS. CLEMENT) Exhibit Number 26?

18 A Uh-huh.

19 Q Do you recognize that?

20 A Yes.

21 Q And that's Myron Boice's evaluation?

22 A Yes.

23 MS. CLEMENT: At this time, your Honor, Plaintiffs  
24 would seek to move into evidence Exhibit Number 26.

25 MR. REID: No objection, your Honor.

26 THE COURT: 26 is admitted.

27 **(Joint Exhibit 26 was admitted into evidence.)**

28 MS. CLEMENT: Can you get the lights for us, James,

1     when you get a chance? Sorry. Multi-tasking there.

2     Q       (By MS. CLEMENT) Is that your handwriting?

3     A       Yes, it looks like my handwriting.

4     Q       Okay. So you completed the initial move-in evaluation  
5     for Mr. Boice; true?

6     A       Yes.

7     Q       So you -- you hadn't done one before he moved in;  
8     true?

9     A       I don't know.

10    Q       Well, does that evaluation have a box there at the  
11    very top for pre move-in, that you are supposed to be  
12    evaluating the residents before you accept them and take  
13    their money?

14    A       That is what it says, but typically we just said it  
15    was the initial evaluation.

16    Q       Because typically Emeritus already took the resident  
17    before they evaluated them; true?

18    A       Not necessarily, no.

19    Q       Okay. So let's go through this -- um, go to the next  
20    page, Erik.

21            Okay. So for Mr. Boice you didn't fill out any of his  
22    medications; true?

23    A       No. Typically we attached it.

24    Q       But you didn't attach it to either Mrs. Boice's or  
25    Mr. Boice's; true?

26    A       They were in their record.

27    Q       What was in their record?

28    A       Their medications.

1 Q And you let the med techs transcribe the medications  
2 onto the MARs; true?

3 A Yes.

4 Q You didn't actually do that to make sure that the med  
5 techs were accurately transcribing the physician's orders;  
6 true?

7 A True, cause I could check it after.

8 Q After?

9 A Well, when they had done it I would go back in with  
10 the meds and make sure it was correct and make sure that  
11 they understood anything that they had not seen before,  
12 anything unusual.

13 Q So is it your testimony that for every resident that  
14 came into that building you would review their transcribed  
15 orders after they were transcribed, including Mrs. Boice's?

16 A Yes.

17 Q And did you talk to the med techs and told them you  
18 did that?

19 A Um, yes. Well, sometimes they didn't -- they didn't  
20 know. I would just check to see if it was correct. If it  
21 was correct and it was the usual medications that we saw, it  
22 was correct.

23 Q Next page, Erik. Oh, sorry. Lights off. Yeah.  
24 Thanks. So, you just -- go to the next page, Erik. Can we  
25 just see the bottom here?

26 Did you put any kind of goals or outcomes for  
27 Mr. Boice?

28 A No. Um, from what I see in the charts he was

1 independent. He didn't have any, um, needs. We had people  
2 who lived there who were totally independent --

3 MS. CLEMENT: Move to strike as non-responsive, your  
4 Honor.

5 THE COURT: Sustained.

6 THE WITNESS: No, there is no goals there.

7 Q (By MS. CLEMENT) And you didn't do any goals for  
8 Mrs. Boice either; true?

9 A It was in the Vigilant. There aren't -- okay.

10 Q Is someone telling you to say that every time, it's in  
11 the Vigilant?

12 A No. That is where it is.

13 Q But that is not what you testified to in your  
14 deposition, is it?

15 A And that -- like I said, I had not thought about that  
16 place for a long time.

17 Q And between the first deposition and the second  
18 deposition you had three more months to think about it and  
19 still you didn't bring that up; true?

20 A True.

21 Q You only thought about it after you retained Mr. Reid;  
22 true?

23 A No. I had a long time to think about this.

24 Q Okay. So nothing on this page. Next page, Erik.

25 Erik, can you take us all the way to the end, page 10 of 10?

26 And this is the page where you're supposed to, um,  
27 sign it and have the resident sign it and date it; true?

28 A True.



1 Q And that's all blank; true?

2 A It is.

3 Q And all of the scores down at the bottom are blank;  
4 true?

5 A Correct.

6 Q And that is just like Mrs. Boice's was; true?

7 MR. REID: Objection --

8 THE WITNESS: Well, hers was signed.

9 Q (By MS. CLEMENT) Hers was signed, right, but all of  
10 the scores were blank; true?

11 A True.

12 Q Thank you, Erik. Thank you, James.

13 And isn't it true that you, um, didn't know what the  
14 term "bedridden" meant when you were at Emeritus?

15 A I learned what "bedridden" meant for Title 22. It can  
16 be interpreted differently in different health care  
17 settings.

18 Q Isn't it true that when you worked at Emeritus you did  
19 not know what the term "bedridden" meant?

20 A I did when I read Title 22. It specifically states it  
21 in there.

22 Q Do you remember in your deposition telling me you  
23 didn't know the term "bedridden"?

24 A I didn't recall what it was in relation to assisted  
25 living. Like I said, in health care different terms can  
26 mean -- have a -- have a narrower or larger definition.

27 Q And isn't it true that the term "bedridden" included  
28 for -- was a prohibited or restricted condition for, um,

1 assisted living facilities at the time Mrs. Boice was a  
2 resident?

3 A I believe it was restricted in some ways.

4 Q In other words, you weren't supposed to be admitting  
5 residents that were bedridden; true?

6 A I don't recall exactly.

7 Q And isn't it true that "bedridden" included residents  
8 who needed the assistance of one or more persons to get them  
9 in and out of bed?

10 A Um, I -- I am not sure. I haven't looked at the  
11 definition in a while.

12 Q Isn't it true that there were lots of residents at  
13 Emeritus in your tenure that needed the assistance of more  
14 than one resident to get in and out of bed?

15 A No.

16 Q Isn't it true that there were a lot of residents at  
17 Emeritus who needed the assistance of at least one person to  
18 get them in and out of bed?

19 A Not a lot.

20 Are you talking the whole building or just memory  
21 care?

22 Q Well, let's start with memory care. Isn't it true  
23 that at least a third to half of the people in the Memory  
24 Care Unit at any given time needed that assistance?

25 A No, that is not true.

26 Q And how would you know that?

27 A Because I do recall some of the people there. I  
28 remember how they got around. I remember how many of them

1 walked independently or with a walker.

2 Q Walking independently or with a walker doesn't mean  
3 you don't need the assistance of someone to get in and out  
4 of bed; true?

5 A True.

6 Q Well, that is the question. Do you understand -- do  
7 you have it in mind?

8 A I do. But because you assist someone doesn't mean  
9 they needed it. You're being nice. They could get up if  
10 they needed to.

11 Q Okay. Do you think it was just the -- Emeritus' job  
12 to help people get in and out of bed or was that just them  
13 being nice if they did it?

14 A It depended on their need. If they needed the  
15 assistance to get up, they received the assistance. If they  
16 didn't, sometimes the caregivers -- you know, they cared  
17 about these people. Those workers in memory care were there  
18 for a very long time.

19 Q So going back to my question, if the residents needed  
20 assistance getting in and out of bed then you needed to have  
21 enough staff to make sure that happened; true?

22 A We needed to meet their needs, yes.

23 Q All of the residents' needs; true?

24 A True.

25 Q Um, isn't it true that the reason you left Emeritus is  
26 because you were not comfortable with the amount of staff  
27 allotted to take care of the number of residents who lived  
28 in the facility?

1 A That is not why I left.

2 Q Isn't it true that you never told any of the families  
3 of the residents at Emerald Hills during the time that you  
4 were the resident care director about your concerns about  
5 understaffing in the facility?

6 MR. REID: Assumes facts not established, it's  
7 argumentative.

8 THE COURT: She can answer.

9 THE WITNESS: I didn't discuss anything with the  
10 families that didn't have to do with their resident. But as  
11 far as understaffing, that's a term that comes and goes, you  
12 know, people leave, we hire new people, but I did not feel  
13 that they were understaffed.

14 Q (By MS. CLEMENT) Isn't it true that what took you out  
15 of Emeritus was you were not comfortable with the amount of  
16 staff to take care of the people who were there?

17 A I think there was sufficient staff.

18 MS. CLEMENT: Okay. At this time, your Honor,  
19 Plaintiffs would seek to play exhibit -- excuse me --  
20 deposition 320, lines 17 through 11.

21 320, isn't that right?

22 320, 17 through 321, 11. Thank you. It starts with,  
23 Did you, ends with, Her superiors.

24 MR. REID: I think that it starts at line 14 of 320.

25 (Discussions were had between attorneys.)

26 MS. CLEMENT: So 320, line 14 through 321, line 8. I  
27 apologize, your Honor, and to the jury.

28 THE COURT: It's all right.

1 MS. CLEMENT: We had a problem. The court reporter  
2 was single -- some things got single spaced and we just  
3 discovered that last night. I apologize.

4 THE COURT: No objection?

5 MR. REID: No, your Honor.

6 THE COURT: All right. Thank you.

7 **(The following video excerpt was then played in open court:)**

8 Q Did you ever tell any of the families of the residents  
9 that were at Emerald Hills during the time you were a  
10 resident care director about your concerns regarding  
11 staffing?

12 A I don't believe so. I believe that the company was  
13 following the law, and I may not have liked the law, but if  
14 that was the law, then it was the law. And eventually that  
15 is what took me out of there was that I was not comfortable  
16 with the amount of staff to take care of the people who were  
17 there.

18 Q But you didn't have any training on what the actual  
19 law was at the time, correct?

20 A I did not.

21 Q You were making an assumption that Emeritus was  
22 complying with the law, correct?

23 A I had to rely on the executive director to know that  
24 that facility was running properly, and her superiors.

25 **(Video stopped.)**

26 Q (By MS. CLEMENT) Did you hide from families --

27 A No.

28 Q -- when they came looking for you, Mrs. Stevenson?

1 A No.

2 Q Isn't it true that you did?

3 A No.

4 Q Isn't it true that you hid from the Boice's?

5 A No.

6 MS. CLEMENT: No further questions. Thank you, your  
7 Honor.

8 THE COURT: Mr. Reid?

9 MR. REID: Yes. Thank you, your Honor.

10 Good morning, ladies and gentlemen.

11 REDIRECT EXAMINATION

12 By BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
13 Defendants:

14 Q Good morning, Ms. Stevenson.

15 A Good morning.

16 Q Um, you -- when did you leave Emerald Hills?

17 A Um, looking at the record -- I always think it's  
18 February, but it was actually like January, the 29th.

19 Q Of?

20 A '09.

21 Q Okay. And until this lawsuit did you have -- what --  
22 what contacts did you have with, um, Emeritus?

23 A None.

24 Q And, um, what, if any, allegiances do you have with  
25 Emeritus?

26 A None.

27 Q What is your motivation -- you know you have to be  
28 here. Probably don't want to be. Why are you here, what

1 are you trying to accomplish?

2 A I'm here because I have to be here, but what I really  
3 want to have heard is, um, what happened during my time  
4 there so that a determination can be made that's accurate.

5 Q Okay. And we are going to talk about that, but first  
6 I want to -- if you could pull up, um, Exhibit 85, please?

7 A 85?

8 THE COURT: Mr. Lincoln, can I get 85?

9 Q (By MR. REID) And I just want to focus your attention  
10 to the first two pages in 85. Do you recognize that  
11 document?

12 A Yes.

13 Q All right. Could we pull up the first page of 85?  
14 Actually, let's go to the second page, please. All right.  
15 Let's look at the education portion.

16 Could you describe for the jury -- give them your  
17 background, your education, please?

18 A Um, I have an associate's degree through American  
19 River College for nursing.

20 Q Okay. And, um, it says you have a registered nursing  
21 degree?

22 A I do.

23 Q It says you completed a degree program, AS and RN.  
24 What does that mean?

25 A Well, when you get your associate's degree you also  
26 have an associate's degree in science as well as, um, taking  
27 the registered nurse course for which you are then able to,  
28 um, take your licensing test.

1 Q All right. And maybe -- could you just really briefly  
2 explain to the jury what nursing school is?

3 A Nursing school is a combination of classroom and  
4 clinic. We had three days that we did classroom work, going  
5 over books, anatomy, and -- you know, I had taken anatomy  
6 and physiology but we talked more about it in the nursing  
7 sense. And then there are a couple of days where you are in  
8 a hospital doing rotations of different fields in the  
9 hospital, oncology, pediatrics, mental health, um, cardiac.  
10 I even went into surgery.

11 Q Um, what -- what drew you to nursing?

12 A I always wanted to be a nurse.

13 Q Um, and so what years did you attend nursing school?

14 A I was there '95, um, in '96 specifically in nursing  
15 school. I had two years of, um, prerequisites prior to  
16 that, so '93 through '96.

17 Q Okay. And, um -- all right. If you could pull out,  
18 please?

19 Can you just give us a background -- a little brief  
20 background of what leads -- leads you up to working at  
21 Emerald Hills? What is your work history?

22 A I worked at Mercy American River, which is no longer a  
23 hospital, um, in Carmichael. That was years ago. They are  
24 connected to Mercy San Juan. I worked in the telemetry unit  
25 and occasionally floated to the ICU, emergency department.  
26 It was considered a critical care area. Um, most of our  
27 patients were -- I mean, we called the young ones anyone who  
28 was under 80 because usually if they have heart issues they



1 are a little older.

2 Q What is telemetry?

3 A Telemetry is the, um -- it's the attachment that you  
4 have with your heart monitoring so that we can see what your  
5 heart rhythm is at the desk all of the time so we are  
6 monitoring your cardiac situation.

7 Q All right. And then, um, if you can pull out?

8 After working at Mercy --

9 A Yes.

10 Q -- what -- what was your next career?

11 A I had been working nights and I, um, decided that I  
12 wasn't really good at working nights and I wanted to spend  
13 more time with my children so I did medical transcription  
14 for, um, many doctors, mostly specialists, emergency rooms.  
15 Um, I did it for Kaiser pediatric, oncology. It was really  
16 a fabulous education to do transcription notes for doctors'  
17 offices.

18 Q What does that mean? I mean, we might know what it  
19 means to transcribe, but what does a medical  
20 transcriptionist do?

21 A When a doctor sees a patient they want to have a  
22 record of their visit and what their plans and assessments  
23 are, and they will, um, you know, put that on to some type  
24 of recording device and then I would transcribe what they  
25 spoke on to paper.

26 Q Why was that an educational process for you?

27 A I learned a lot about all -- all fields of, um,  
28 medicine and what the outcomes are, what the plan of action

1 is, um, how they resolved issues that came up. It was very,  
2 very interesting.

3 Q And how long -- how long did you do that?

4 A I just recently stopped doing it. I had a doctor who  
5 did not want me to quit, um, a rheumatologist, and just when  
6 I gave him my resignation he gave it back and said he would  
7 let me reconsider. And um -- but just recently he's gone to  
8 doing -- because he is almost retiring, doing his own, so  
9 I'm not doing transcription --

10 MS. CLEMENT: Your Honor, narrative.

11 THE COURT: Sustained.

12 Q (By MR. REID) So something that you have done most of  
13 your career it sounds like?

14 A Yes, I have.

15 Q Okay. Then, um, what, um -- the next step in your  
16 career, what was the next one?

17 A Uh-huh. In between, um, while doing medical  
18 transcription I went and got my license as an aesthetician  
19 and thinking about going into medical cosmetology. I worked  
20 for, um, Dr. Harris doing, um, laser hair reduction and  
21 using lasers. That required some education.

22 Q All right. How long did you do that?

23 A I was there -- I was there probably only four months  
24 or so.

25 Q Okay. How does nursing relate to that -- that  
26 practice that -- what you were doing?

27 A Well, using a laser is, um -- can be very dangerous.  
28 You -- you really have to understand the power, skin types,

1       etcetera.

2               And while I was there I also worked in the back office  
3       covering their advice line and I learned that I really liked  
4       doing the triage and advice line, so I went to look for a  
5       job that did that.

6       Q       And it was a pretty short time you were there, four  
7       months.   Why did you leave?

8       A       That laser scared me.

9       Q       Okay.

10      A       I didn't want to hurt anybody.

11      Q       All right.   Um, pull back.

12               What was the next -- and all of this time you're still  
13      doing the medical transcription?

14      A       Yes.

15      Q       Did you do that from home?

16      A       Yes.

17      Q       All right.   Then what was next in your career?

18      A       I became an advice triage nurse for Sutter Roseville  
19      Internal Medicine with eight practitioners.   I was on the  
20      phone a lot.   I did see some patients.

21      Q       So tell us how that worked, advice triage nurse, what  
22      was your job?

23      A       People, um -- patients would call into the office  
24      with, um, problems, they wanted to see the doctor right away  
25      and they could get to me right away to see, um, what we  
26      could do, maybe there was another option for them or to get  
27      them in quicker to see the doctor, um --

28      Q       That word "triage", what does that mean?

1       A       That means to determine what order something needs to  
2       be accomplished. We needed to know if they needed to come  
3       in right away or if they could wait for their appointment,  
4       um, to determine what the emergency -- how -- how acute the  
5       situation was.

6       Q       Okay. Was this a full-time job?

7       A       Yes, it was.

8       Q       And where did you work when you were doing this?

9       A       I was in Roseville in a clinic -- in a internal  
10      medicine clinic office.

11      Q       Um, can you describe very briefly what a typical day  
12      would be as the advice triage nurse?

13      A       Um, I would come in and, um, I had a desk and, um,  
14      just start taking phone calls, um, looking at appointments,  
15      determining if, you know, if people needed to come in right  
16      away or what the appointments were, to discuss with the  
17      doctors what their needs were, um, if they were planning to  
18      take some time off, to help triage their patients to other  
19      doctors. Um, I took a lot of phone calls, talked to a lot  
20      of patients.

21      Q       Okay. And what kind of doctor -- what kind of  
22      practice was it?

23      A       Internal medicine.

24      Q       And what is "internal medicine"?

25      A       That is adult medicine, 18 and older. And typically,  
26      um, they are more complicated patients, although anyone who  
27      is an adult can see an internal medicine doctor if they  
28      accept them.

1 Q Up here it says "family practice"?

2 A Okay.

3 Q Is it -- what's the difference or similarity of family  
4 practice and --

5 A Well, a family practice will take anyone from zero to  
6 whenever, 100, um, but this was internal medicine. That was  
7 an error in there.

8 Q All right. How long, um, were you in this position?

9 A A year.

10 Q All right. And why did you leave that?

11 A I decided I wanted to work part-time.

12 Q All right. What was your next job?

13 A The Lutz Adult Day Center up in Nevada City.

14 Q Can you pull that up? Thank you.

15 Um, I don't want you to read that, it's a big old  
16 paragraph.

17 A It is.

18 Q But tell us what you did in -- what was your role?

19 A My role there was to give out medications, to monitor  
20 the patients that we saw, um, or -- they weren't really  
21 patients, they were attendees of the adult day center. Just  
22 to keep an eye on them. Um, it was more respite, somewhere  
23 for them to go in the day and let their families have a  
24 little break.

25 Some of the res -- some of the attendees came every  
26 day, some of them came a couple of days a week, and they  
27 were all ages. We had a young lady who had cerebral palsy  
28 who was in a chair, and we had, you know, um, elderly people

1    who, um, didn't particularly have anything more than say  
2    high blood pressure or something like that. We did have  
3    some brain trauma. Um, we had people who were blind. Just  
4    the whole spectrum. Parkinsons. Any -- any -- anybody  
5    could come in that we could care for there for the day  
6    because their family needed the break.

7    Q       Okay. I think you mentioned the word "respite care"  
8    if I'm not mistaken.

9    A       Yes. It was respite for the day.

10   Q       Okay. What is "respite care"?

11   A       That means that you're taking, you know -- keeping an  
12   eye on them while their family could do other things because  
13   these were people who lived in a home of some kind, it might  
14   be a group home, it might be in their own home or it might  
15   be with other family members.

16   Q       Okay. Um, how long would a respite care last?

17   A       Well, they would just come for the day, but typically  
18   when I was there we -- it was a very short period of time.  
19   We didn't lose anyone. We did gain some, um, attendees.

20   Q       When you say you didn't lose anyone, you mean nobody  
21   wandered away?

22   A       Nobody died while I was there. They didn't pass away  
23   at home or anything like that.

24   Q       So help us understand then the structure of this adult  
25   day program.

26   A       Uh-huh.

27   Q       What was your -- you're a co-executive director?

28   A       No, I wasn't. There were co-executive directors.

1 Q Oh, I see, that is a reference up there.

2 A Right.

3 Q Okay. What was your position?

4 A I was the nurse. I did finger sticks, because some of  
5 them were diabetic, um, blood pressures, we checked blood  
6 pressures, give them their medication, because some of them  
7 had brain trauma they did need to be administered  
8 medication. We were a medical model. They do have, um,  
9 adult day centers that are not.

10 Q Oh, okay.

11 A But we were a medical model.

12 Q So let's finish kind of understanding the structure  
13 then. So there were co-executive directors that you --  
14 who -- did you report to them?

15 A Yes.

16 Q All right. And then was there anybody else above you  
17 in the chain of command there at the community?

18 A No.

19 Q All right. And then you were the nurse?

20 A Yes.

21 Q Who reported to you?

22 A The caregivers that were there.

23 Q How many -- how many -- first of all, how many  
24 patients or clients are we talking about?

25 A About seventeen, seventeen a day.

26 Q All right. So how many caregivers then were you  
27 working with?

28 A We had three caregivers, but we also had a lot of

1 other staff there. We had physical therapy was there, um,  
2 occupational therapy was there. Um, we did provide  
3 entertainment. We had a lot of volunteers from the  
4 community who would come in and, um, entertain them.

5 Q All right. And you said that this adult day health  
6 care center was a medical model?

7 A Yes, it was.

8 Q What does that mean?

9 A That meant that I administered medications and that I  
10 did finger sticks for insulin, um, blood sugar diabetes  
11 issues.

12 Q What were the hours of operation of -- of the day  
13 center?

14 A It was all day. It was 9:00 to -- 8:30 to 5:00.

15 Q How would the folks get there?

16 A They usually came on the, um, Dial-A-Ride bus or  
17 family would bring them.

18 Q And, um, did you enjoy that --

19 A I did.

20 Q -- job?

21 Why?

22 A Um, it was just nice to be around the people and, um,  
23 to meet their needs and to talk to them. They didn't always  
24 have an opportunity to be out in the community. It was a  
25 very nice place to, um, to just be around other people who  
26 needed your help.

27 Q And this -- did you have any jobs between the day  
28 health center and then going to work at Emerald Hills?



1 A No, I did not, except for the transcription which I  
2 continued to do.

3 Q And why did you leave here?

4 A They closed -- the board of directors closed them down  
5 because we just didn't have any funding.

6 Q Okay. All right. Thank you.

7 A Uh-huh.

8 THE COURT: Can we get the lights, please, or are you  
9 still doing that?

10 MR. REID: No. We are done with that. Thank you,  
11 your Honor.

12 Thank you, Mr. Lincoln.

13 Q (By MR. REID) All right. So you started at Emerald  
14 Hills when?

15 A March of '08.

16 Q How did you hear about the job?

17 A It was in the paper.

18 Q Which paper?

19 A Auburn Journal.

20 Q Where do you live?

21 A Auburn. Actually, I live in Nevada County but our  
22 mail address is Auburn.

23 Q How -- do you still live in the same place you lived  
24 when you worked at Emerald Hills?

25 A Yes.

26 Q How close do you -- do you live to Emerald Hills?

27 A Nine miles.

28 Q How long does it take you to get there?

1 A Fifteen minutes or less.

2 Q Um, and who did you interview with?

3 A Nancy Cordova.

4 Q Did you interview with anyone else either personally  
5 or over the phone before getting the job?

6 A Yes. I met, um, the regional nurse who was at the  
7 time Corlis -- I can't remember her last name. She was  
8 leaving when I was coming in, but she did interview me.

9 Q All right. And um, how many interviews did you have?

10 A One, two -- three.

11 Q I don't want to go into big details about all that was  
12 discussed, but at the end of that interview process what was  
13 your -- what was your -- your take on this job as resident  
14 care director at Emerald Hills?

15 A Well, it was a new field for me, understanding  
16 assisted living and, um, resident care for adults, elderly,  
17 um, and I, you know, was a little nervous about it. It was  
18 a bigger job. Um, but I was assured by the people that I  
19 interviewed with that I would receive the support that I  
20 needed and I felt that they could give it.

21 Q Did you, um -- did you feel qualified for the job?

22 A Yes.

23 Q Why?

24 A Because it was a non medical model. It was really  
25 more about paperwork and observing and, um, training staff  
26 what to observe for in a home type environment.

27 Q I'm going to ask you some questions about the -- your  
28 time there at Emerald Hills. But I want -- I want to ask

1     you to help us understand this notion of, um, non medical  
2     model or social model.

3     A       Uh-huh.

4     Q       Can you explain to the jury what that means?

5     A       That means that --

6           MS. CLEMENT: Lacks foundation, your Honor.

7           THE COURT: Overruled.

8           THE WITNESS: That means that, um, when people would  
9     reside there it was because they didn't -- they couldn't  
10    stay safely at home or family wasn't able to care for them  
11    because a lot of people have to work. So they would come to  
12    this environment, have their own apartment, still have free  
13    will about what they wanted to do. We provided meals and,  
14    um, housekeeping, and we were able to meet the needs of  
15    activities of daily living which is getting dressed and  
16    brushing your teeth if you needed it.

17    Q       (By MR. REID) Okay. We saw, um, Myron Boice's  
18    assessment a little while ago and it was all zeroes. Do you  
19    have that in mind?

20    A       That's -- yeah. Uh-huh.

21    Q       So what is -- explain to the jury what that means in  
22    terms of the -- the care and support that, um, Mr. Boice,  
23    from your perspective, required?

24    A       Well, he was independent. He left the facility. I  
25    don't recall if he had a car. Some -- some of them did.  
26    Um, I think he did because he would leave. But they were  
27    independent. It was like having their own apartment but  
28    their meals were provided for, housekeeping was provided

1 for, um, we could do their laundry, um, he could attend any  
2 of the, you know, recreational activities there that we did,  
3 but he was free to come and go. We did ask that they sign  
4 in and out so that if, you know, we couldn't find them we  
5 wanted to know when they left and where they were going, but  
6 that was -- that was up to them too. They had free will.  
7 That was a courtesy to us if they were independent.

8 Q Now, we have also seen the assessment that you did for  
9 Mrs. Boice and we have seen some of her decline over the --  
10 over those couple months. And let me ask you, from your  
11 perspective a person with those -- those kinds of needs that  
12 we have seen with Mrs. Boice, would you describe that as a  
13 typical resident of, um, Emerald Hills?

14 MS. CLEMENT: Leading, lacks foundation.

15 THE WITNESS: Not at all.

16 THE COURT: Sustained.

17 MS. CLEMENT: Move to strike.

18 THE COURT: Granted.

19 Q (By MR. REID) Let's do it a different way and talk  
20 about residents who require skilled nursing support, okay?

21 A We didn't have any there that needed skilled nursing  
22 support.

23 Q Okay.

24 MS. CLEMENT: Your Honor, move to strike as  
25 non-responsive. There wasn't even a question pending.

26 THE COURT: Sustained.

27 MR. REID: Okay.

28 THE COURT: Granted.

1 Q (By MR. REID) Talking about Joan Boice and the  
2 services that she was requiring throughout her stay, how  
3 would you describe that -- those levels of services?

4 MS. CLEMENT: Objection, your Honor, it lacks  
5 foundation. The witness doesn't remember Mrs. Boice.

6 THE COURT: Seems right.

7 MR. REID: Okay. That is fine. We will get to that.

8 Q (By MR. REID) In terms of when you were working at  
9 Emerald Hills --

10 A Yes.

11 Q -- um, describe for the jury, if you can -- can you  
12 quantify for us in some way the residents who needed a lot  
13 of assistance versus those who were more independent, like  
14 Mr. Boice?

15 MS. CLEMENT: Objection, lacks foundation, it's  
16 leading. She didn't remember Mr. Boice either.

17 THE COURT: Counsel approach, please?

18 (Sidebar conference was held.)

19 MS. CLEMENT: Thank you, your Honor.

20 THE COURT: Objection is sustained.

21 Q (By MR. REID) I want to look at some documents in  
22 Exhibit 85 and go over them with you.

23 A Okay.

24 Q The first one I would like you to look at is, um, page  
25 18.

26 Your Honor, would it be okay if we displayed that  
27 document to the jury? I believe 85 has been admitted.

28 THE COURT: Yes.

1 MR. REID: Thank you.

2 Thank you, Mr. Lincoln.

3 Q (By MR. REID) We -- you were asked some questions by  
4 Ms. Clement and we even saw some video, um, testimony about  
5 your training that you received when you first started at  
6 Emerald Hills. Do you have that in front of you?

7 A I'm not sure where page 18 is.

8 Q Oh, may --

9 A These seems to be --

10 Q -- I assist?

11 It's hard to see the Bates stamp down here.

12 A Oh, okay. There we go. Thank you.

13 Q Okay. Um, could you bring up just maybe the top  
14 portion here? Actually, let's get the whole top of that.  
15 All right.

16 So your -- your position was RCD, resident care  
17 director?

18 A Yes.

19 Q Okay. And, um, this is part of your -- your personnel  
20 file, I think. Um, tell us about, um, what you recall going  
21 over with Ms. Cordova upon your -- your, um, hiring there at  
22 the -- at Emerald Hills?

23 MS. CLEMENT: Lacks foundation. There is two  
24 questions too, I believe.

25 THE COURT: No. She can answer.

26 THE WITNESS: Um, the executive director informed me  
27 about the overview of, um, Emeritus and about the company,  
28 and, um, what I would be doing as part of the team that was

1     there.

2     Q       (By MR. REID)   Okay.  On this document there is a  
3     whole bunch of boxes and initials and dates?

4     A       Right.

5     Q       Um, um, what do you -- do you have a memory of -- of  
6     spending some time with Ms. Cordova when you were hired?

7     A       Yes.

8     Q       Okay.

9     A       Yes.

10    Q       Now, let's go down to the next section.

11           Now, the next section here "resident services director  
12    section", um, the document -- the onboarding document lists  
13    a whole lot of, um, of areas of training.  Looking at that  
14    list on the left, not on the right because that is  
15    different --

16    A       Uh-huh.

17    Q       -- um, do you -- do you have a recollection of  
18    discussing these issues with Ms. Cordova as you were meeting  
19    with her?

20    A       Yes.

21    Q       All right.  Let's go down to the bottom of that page.

22           Now, the next section, it's "SCU, program manager  
23    director."

24    A       Yes.

25    Q       And in the box it's not NC anymore?

26    A       Right.

27    Q       It's AP.  Do you know who "AP" is?

28    A       Alicia Parga.

1 Q All right. Do you have a recollection, if any --  
2 well, what recollection do you have, if any, with meeting  
3 with Alicia Parga when you first started at Emerald Hills?

4 A I recall meeting with Alicia.

5 Q And what do you recall about that meeting?

6 A We talked about, you know, the goals of memory care.

7 Q Okay. And then the next box is entitled "maintenance  
8 director" and then there is a CG?

9 A Yes.

10 Q All right. Do you -- do you have an understanding of  
11 who CG is?

12 A It's Chris, and I think his last name is Garibaldi if  
13 I remember it correctly.

14 Q And who was he?

15 A He was the maintenance director.

16 Q And as you -- do you have any recollection at all  
17 of -- of meeting with Mr. Garibaldi, and we will go with  
18 that name?

19 MS. CLEMENT: Your Honor, this exceeds the scope and  
20 I'm not seeing the relevance.

21 THE COURT: Overruled.

22 Q (By MR. REID) Do you have a recollection of meeting  
23 with Mr. Garibaldi as part of your hiring at the --

24 A Yes.

25 Q And what -- from -- if you have an understanding, tell  
26 the jury what the maintenance director's role was at Emerald  
27 Hills?

28 A Maintenance director was to keep the building in good



1 working condition. The, um, residents on the assisted  
2 living side, not the memory care, but they all had their own  
3 kitchens and refrigerators and microwaves and, um, sinks and  
4 bathrooms. So, you know, we had a big kitchen and memory  
5 care had a kitchen, so he had all of the responsibilities of  
6 making sure air conditioning worked properly, elevator was,  
7 um, you know, inspected regularly, all of the things that go  
8 with building maintenance.

9 Q Okay. Um, let's go back up to the top now and we will  
10 go to the other column.

11 There is, um, the section "business office director"  
12 and, um, a listing of quite a few categories there. Do you  
13 remember -- do you have a recollection of discussing the  
14 the -- the employee handbook and those related topics as  
15 part of your hiring?

16 A Yes. Um, I -- that was where all of the, um,  
17 employee, um, information was kept, and as their supervisor  
18 I was able to go through their, um, training in each of  
19 their, um, charts to make sure that they were up-to-date on  
20 their training for that -- for when I took over.

21 Q Okay. We will come back to that.

22 Can you scroll down, please? The next section.

23 Um, after the business office then there is  
24 "activities director".

25 A Right.

26 Q Um, as part of your hiring and -- and orientation, do  
27 you recall meeting with an activities director?

28 A Yes.

1 Q Um, do you recall the name?

2 A Gail. I don't recall her last name.

3 Q And what do you recall about your -- your  
4 conversations with Gail as you were getting oriented to your  
5 job?

6 MS. CLEMENT: Hearsay.

7 THE COURT: Is there any exception?

8 MR. REID: It goes to her state of mind, her awareness  
9 of her role, her responsibilities.

10 THE COURT: Okay. But that wasn't a question as to  
11 her state of mind, it was just a call for general  
12 conversation.

13 MR. REID: Okay.

14 THE COURT: So, sustained.

15 MR. REID: All right.

16 Q (By MR. REID) Based on your conversations with, um,  
17 the activities director Gail, what was your understanding of  
18 your role with regard to activities and that part of the,  
19 um, operations at Emerald Hills?

20 A It was part of our customer service, um, as, you know,  
21 as a building and, um, to encourage the residents to  
22 participate in activities.

23 Q Okay.

24 A And I could help her encourage them.

25 Q All right. Now, the next box is "dining services  
26 director." Do you -- do you have a recollection of meeting  
27 with, um, a dining services director as part of your  
28 orientation?

1 A Yes, I did.

2 Q Okay. MM, do you recall who that is?

3 A Michael. I can't remember his last name.

4 Q And based on that meeting did you have any -- what  
5 understanding, if any, did you have of how your role as  
6 resident care director related to what the dining services  
7 director was doing?

8 A Um, we wanted to be careful of, um -- some people  
9 had -- we didn't really do specific diets but to make sure,  
10 especially in memory care, that people were getting the  
11 right, um, nutrition or that they had snacks available and  
12 that, um, you know, the food was easy enough for people to  
13 eat, and, um, if there were any problems that we would -- we  
14 would discuss that.

15 Q Now, the bottom part there, the next bracketed box  
16 is -- oops, up a little bit. Sorry, Ms. Ford, my fault.  
17 That's "marketing director"?

18 A Uh-huh.

19 Q Did -- was that part of your -- did -- did -- did you  
20 have that as part of your orientation into your role in  
21 meeting with somebody from --

22 A Yes.

23 MS. CLEMENT: Leading.

24 THE COURT: Sustained.

25 Q (By MR. REID) What, um, if anything, did you, um,  
26 learn about the marketing aspects of, um, Emerald Hills as  
27 part of your orientation?

28 A Well, I learned what the marketing director did. Um,

1 we did have a room that was decorated for a tour so that  
2 people could envision, you know, what a room would look like  
3 if they were to move there or if their loved one was to move  
4 there, and just talked about in general, um, you know, um,  
5 to keep in communication as a team to -- to make it a nice  
6 place to live.

7 Q Now, the -- and then the last box there is "department  
8 specific orientation" and, um, apparently there is more  
9 issues with, um -- that you discussed with Nancy Cordova?

10 A Yes.

11 Q Okay. Thank you. You can take that down.

12 Now, list -- let me ask you this: When you started at  
13 Emerald Hills -- excuse me -- was there a current resident  
14 care director?

15 A No.

16 Q So, um, as part of your orientation and training did  
17 you have an opportunity to meet specifically with, um, a  
18 resident care director who had been doing the job before  
19 you?

20 A Um, in another building, yes.

21 Q Okay. Tell us about that.

22 A Um, I went down to the Emeritus building in Folsom and  
23 met with the, um -- in some buildings they are called  
24 wellness directors -- um, she was at that place, and I spent  
25 the day with her, um, doing all of her -- her chores as a  
26 wellness director.

27 Q Do you recall, in relation to when you started at  
28 Emerald Hills, when you went down to Folsom and you met with

1 the wellness director there?

2 A It was pretty soon. Um, within, I would say, the  
3 first couple of weeks when I was there.

4 Q All right. And what, if anything, did you gain from  
5 that experience of shadowing that wellness director?

6 MS. CLEMENT: Objection, your Honor, misstates  
7 testimony "shadowing", it's leading.

8 THE COURT: Sustained.

9 Q (By MR. REID) What, if anything, did you gain from  
10 that experience of spending the day and following the  
11 wellness director in the Folsom community?

12 A Um, how busy she was and, um, the interaction with the  
13 residents was very, um, high and, um, just we spent a lot of  
14 time, you know, in her office going over manuals and  
15 paperwork, um, things that needed to be filled out and, you  
16 know, what constituted, you know, certain paperwork to be  
17 brought forth.

18 Q Okay. Um, did -- did the experience over at Folsom  
19 with the wellness -- do you remember who the wellness  
20 director was, by the way?

21 A I don't remember her name.

22 Q Did that experience -- tell the jury, if at all, how  
23 that experience helped you, um, in your ability to do your  
24 job?

25 A Well, um, she did show me a lot of things that had to  
26 be done. I also knew that I could, because I had made a  
27 personal contact there, that I could easily call her if I  
28 had any questions, um, and that it was a very busy job and a

1 very mixed bag as far as you're interacting with people who  
2 live there as well as trying to get all of your paperwork  
3 and all of that done as well.

4 Q Was there any, at all, any discussion or -- or focus  
5 about the wellness coordinator or the resident care  
6 director's interactions with the care staff?

7 A Yes.

8 Q Tell us about that.

9 A Um, she did show me how she scheduled her staff, um,  
10 and just in general how they did it there and, um, just  
11 that, you know, what -- what was expected of Emeritus'  
12 policies as well.

13 Q Okay. You mentioned that you had interviewed with  
14 Corlis Tillman?

15 A Corlis Tillman, yeah, that's right.

16 Q And then, um, apparently you've learned that -- did  
17 you learn that she was moving to a different role or a  
18 different --

19 MS. CLEMENT: Leading your Honor.

20 THE WITNESS: She was -- oh.

21 THE COURT: Sustained.

22 Q (By MR. REID) Um, after Corlis Tillman, did you have  
23 a, um, a supervisor in -- that you could communicate with?

24 A Yes.

25 Q And who was that?

26 A Doris Marshall.

27 Q Okay. Do you remember -- did you -- did you ever  
28 learn where Corlis went?

1 A She went to Texas. She moved to Texas.

2 Q Um, when, if you can recall, in your time frame of  
3 working at Emerald Hills did Doris Marshall become your  
4 supervisor in the -- in this corporate chain?

5 A I don't recall. It wasn't too long but it may have  
6 been a few months.

7 Q Okay. Did Doris Marshall play any role in helping you  
8 understand your job as a resident care director?

9 A She did. She was a support person for me to call, um,  
10 and she did make visits to the -- to the building to support  
11 me.

12 Q Okay. Um, now, when -- when -- let's focus when  
13 you're starting as resident care director since this is a  
14 new experience for you.

15 A Uh-huh.

16 Q Um, did you -- what, if any, access did you have to  
17 resources if you had questions or needs or concerns about  
18 your job?

19 MS. CLEMENT: Exceeds the scope, leading.

20 THE COURT: It does.

21 Are you intending to call this witness in your  
22 case-in-chief?

23 MR. REID: I'm not intending to call her back, um --

24 MS. CLEMENT: Your Honor, may we be heard at sidebar?

25 THE COURT: Yes. Come on up.

26 MS. CLEMENT: Thank you.

27 (Sidebar conference was held.)

28 THE COURT: Based on a discussion at sidebar, I'm

1 going to allow Counsel to exceed the scope of the direct  
2 examination with the understanding that, um, this witness's  
3 testimony will be concluded as part of this process.

4 Please continue.

5 MR. REID: Thank you.

6 Could I kindly request the last question be read back,  
7 your Honor?

8 THE COURT: Yes.

9 Brooke, please.

10 (Whereupon the last question was read back as requested.)

11 THE WITNESS: I had, um, access to manuals. Um, we  
12 had manuals for everything. Um, I also had, um, the support  
13 of my team there at the building. I could call on my  
14 quality services person, Doris, who was above me. I could  
15 call other resident care directors. I could call directly  
16 to, um, the next level up if I needed to. I -- I felt like  
17 there were people around that you could get a hold of rather  
18 quickly in order to get questions answered.

19 Q (By MR. REID) Okay. So those people, those resources  
20 that were available to you, um, did you utilize those  
21 resources?

22 A I did.

23 MS. CLEMENT: Leading.

24 THE WITNESS: Oops.

25 THE COURT: Overruled.

26 THE WITNESS: I did.

27 Q (By MR. REID) And you've mentioned that while you  
28 were interviewing you -- you felt assured that you would



1 receive support to learn how to do your job. Do you have  
2 that testimony in mind?

3 A Yes.

4 MS. CLEMENT: Leading.

5 MR. REID: It's foundational, your Honor.

6 THE COURT: The objection is sustained. Let's get to  
7 where we need to go.

8 Q (By MR. REID) Um, did you ever express any concerns  
9 to anyone that you, um, weren't getting the kind of support  
10 and guidance that you needed to do your job?

11 A Yes, I did.

12 Q Okay. Who did you express that to?

13 A Doris. I believe it was up to Doris and probably  
14 Nancy as well, the executive director.

15 Q And tell us about that.

16 A Um, there was a time that I have reviewed in the  
17 records that I, um, must have called Doris and asked her --  
18 no, I e-mailed her something, I believe, and, um, said that  
19 I was concerned about -- I -- I let my concerns be known  
20 whenever I needed to -- that, um, I didn't ever want to  
21 endanger my license.

22 Q Okay.

23 A I didn't get it until I was over 40. I just worked  
24 really hard for it.

25 MR. REID: All right. So with permission, your  
26 Honor --

27 MS. CLEMENT: Your Honor, move to strike that last  
28 part as non-responsive.

1 THE COURT: Overruled.

2 MR. REID: With the Court's permission -- I believe  
3 Exhibit 267 has been admitted into evidence. If we can pull  
4 that up. Would it be okay to display it?

5 THE COURT: Okay.

6 MR. REID: Let's go to -- well, let's take a look at  
7 the signature block there on page 2.

8 Q (By MR. REID) Do you recognize -- can you pull that  
9 out?

10 MS. CLEMENT: Your Honor, we would stipulate that she  
11 wrote this e-mail.

12 Q (By MR. REID) Do you recognize your signature block?

13 A Yes.

14 Q And, um, let's go to the first part of the e-mail.

15 Um, what is this document?

16 A This is an e-mail to Doris Marshall with copies to,  
17 um, Ronda Castleberg, who was the executive director's  
18 superior, and Lisa Hulse, who was Doris's superior. I don't  
19 remember who Shamim Wu was. I don't remember her or him.

20 Q Was this -- you were just testifying about an  
21 occurrence you remember where you, um, had some concerns.  
22 Is this -- does this reflect that, um, concern you were  
23 talking about?

24 A Um, it probably reflected one of some.

25 Q Okay.

26 A I --

27 Q All right. Um, in this -- this e-mail from you to  
28 Doris Marshall, um, what -- what was the concern you were

1 communicating at that time?

2 A I was communicating whether the gentleman of a couple  
3 who were going to move in was appropriate for the assisted  
4 living side, the independent living side of, um, the  
5 facility, or if he should be in memory care because his  
6 doctor had stated on his 602 that he had senile dementia.

7 Q Okay. And you said, um -- you mentioned something  
8 about your license being in jeopardy?

9 A Yes.

10 Q Okay. What -- what was your concern at that point in  
11 time?

12 A I just didn't want to break any laws or rules. I  
13 was -- I wanted to protect my license at all times and also  
14 the -- that this gentleman may not have been appropriate for  
15 that side.

16 Q Okay. And, um, if you could pull out?

17 Um, with regard to this, um, this particular  
18 concern --

19 A Uh-huh.

20 Q -- tell us about the process that you followed to  
21 address the concern?

22 A Um --

23 MS. CLEMENT: Lacks foundation.

24 THE COURT: Sustained.

25 Q (By MR. REID) Do you have a -- do you have a memory  
26 of the process that you followed to address this concern?

27 A If I had a concern like this I would talk to Doris and  
28 she would --

1 MS. CLEMENT: Objection, your Honor, the answer is  
2 non-responsive to the question.

3 THE COURT: I think the confusion is the word  
4 'process.'" Are you looking for a formal process or are you  
5 asking her for generally what she did? Please rephrase.

6 MR. REID: Yes, your Honor.

7 Q (By MR. REID) What -- what was your practice in, um,  
8 addressing concerns to your supervisors when you had them?

9 A Generally I would call Doris.

10 Q And, um, in this instance do you have a memory of what  
11 Doris communicated to you about your concerns?

12 A Um, from -- just from the e-mail that -- that I've  
13 read.

14 Q Okay. And did the e-mail refresh your memory as to  
15 the concerns that you had at that point in time?

16 A Not in this particular case but in general regarding  
17 patients that had senile dementia or dementia on their 602  
18 with regard to how doctors, um, would define that.

19 Q Okay. What -- what -- what was your understanding  
20 then at the time relative to that concern?

21 A Was that I needed to get in touch with the doctor to  
22 find out if this person had mild cognitive impairment or  
23 true dementia. There is a difference, but sometimes doctors  
24 would just put dementia when specifically it was mild  
25 cognitive impairment, which is natural aging, forgetfulness.

26 Q Okay. Now, do you remember -- recall one way or the  
27 other how this particular, um, issue resolved?

28 A I don't.

1 Q Okay. When -- when you -- you say that you would  
2 follow-up with the doctor.

3 A Uh-huh.

4 Q Um, can you tell us about that?

5 MS. CLEMENT: Objection, your Honor, it's vague.

6 THE COURT: Sustained.

7 Q (By MR. REID) Following up with the doctor to clarify  
8 the diagnosis of dementia, tell us about how you would do  
9 that?

10 MS. CLEMENT: Leading.

11 THE COURT: Overruled.

12 THE WITNESS: I would, um, call the family and express  
13 the concern about the difference between mild cognitive  
14 impairment and dementia and try to get some more information  
15 from the doctor as to what his professional opinion was  
16 regarding whether it was mild cognitive impairment or true  
17 dementia.

18 Q (By MR. REID) Okay. Now, did you have an  
19 understanding when you were resident care director at  
20 Emerald Hills whether or not residents with a diagnosis of  
21 dementia could reside at Emerald Hills?

22 A They could, yes.

23 Q Okay. So what's the concern then?

24 A It depends on where they would best be served. If  
25 they have dementia, true dementia, they needed a little more  
26 oversight and, um, care, to be observed more frequently, um,  
27 because they may suffer more confusion --

28 Q Okay.

1       A       -- in general.

2       Q       All right. So when you're -- in this concern when we  
3       are talking about a husband and wife moving in and the  
4       husband has this diagnosis, what's the specific concern that  
5       you have?

6               MS. CLEMENT: Objection, your Honor, it's leading.

7               THE COURT: Sustained.

8               Ladies and gentlemen, leave your notebooks on the  
9       chairs. Remember the admonitions. Let's be back ready to  
10      go at ten to, um, 11:00. We are in recess.

11              Counsel approach, please.

12                       (Sidebar conference was held.)

13                       (Court Reporter switch.)

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1           **(The following proceedings were then had in open**  
2           **court, in the presence of the jury.)**

3           THE COURT ATTENDANT: Remain seated. Come to order.  
4           Court is again in session.

5           THE COURT: All right. Ladies and gentlemen, I am  
6           going to review -- reverse a ruling I made a little bit  
7           earlier today and have Mr. Reid stay within the scope of  
8           direct testimony and allow him to bring back the witness  
9           when it is his case in chief.

10          So, Mr. Reid, please continue.

11          MR. REID: Yes, your Honor.

12          Just to stay in the scope of the cross-examination  
13          by Miss Clement?

14          THE COURT: I'm sorry?

15          MR. REID: Cross-examination by Miss Clement? Stay  
16          in the scope of the cross-examination? Is that correct,  
17          or...

18          THE COURT: We're all staying within the general  
19          rules.

20          MR. REID: Within the scope.

21          THE COURT: Okay?

22          MR. REID: Very good. Thank you, your Honor.

23          Q.        (By MR. REID) Going back to something you mentioned  
24          earlier. You were asked about what, if anything, you did  
25          to, number one, make sure that your staff were trained.

26          Do you have that testimony in mind?

27          A.        Yes.

28          Q.        Okay. And when you started at Emerald Hills, coming

1 in, having not been in this position before, what, if  
2 anything, did you do to confirm whether or not your staff  
3 were appropriately trained?

4 A. I reviewed their personnel charts on the training to  
5 see if everyone was up to date on what I had just learned  
6 in my onboarding would have been current for them.

7 Q. Okay. How many people worked at Emerald Hills?

8 A. You know, I don't remember exactly, but it was  
9 probably 22. I mean, for my staff. It was probably 30  
10 maybe all together. I'm not sure.

11 Q. Okay. And just describe for us what you did.

12 A. During that time?

13 Q. Yeah. To -- with regard to the training  
14 qualifications.

15 A. I took what I knew that they had to have as  
16 training, and then I looked in each individual's record to  
17 see if they were up to date on the training that they  
18 needed, as was required.

19 Q. Okay. Were there -- do you recall whether or not  
20 you found any deficits in the required training?

21 A. I don't recall. I -- I have a feeling I did not at  
22 that time, feel that there were.

23 Q. All right. And why were you doing that?

24 A. Because I had to know if they were able to do their  
25 job and that I was starting in a good place with people who  
26 had the right training; that had the appropriate training  
27 that they were supposed to have.

28 Q. Now -- now, with regard to -- you were asked



1 questions about efforts that you made to train your staff.

2 Do you have that testimony in mind?

3 A. Yes.

4 Q. All right. What, if any, training did you do with  
5 your staff while you were the resident care director?

6 A. We trained -- I trained some new med techs. Also,  
7 we did some -- Nancy and Alicia and I did memory care  
8 training, towards the end. We wanted to refresh every  
9 everybody's training with regard to memory care. So we  
10 started at the beginning and went through the entire  
11 training. And, also, we did a lot of training just kind of  
12 on the fly, you know.

13 MS. CLEMENT: Objection. It's a narrative, your  
14 Honor.

15 THE COURT: Overruled.

16 THE WITNESS: So we would do training -- you know,  
17 if people ask you advice, you don't write down that that  
18 was training. You just are training them as you go. If  
19 they have an issue, you help them resolve it. But you  
20 don't document all of those things that happen on a daily  
21 basis.

22 Q. (By MR. REID) Are you familiar with the concept of  
23 in-service training?

24 A. Yes.

25 Q. What is in-service training?

26 A. In-service training is a formal training that you  
27 sign in that you've attended. There's an agenda of what  
28 you're going to cover, how long it's going to take, who

1 should attend. The people that attend sign in. And then  
2 you keep those records. And you teach what is on the  
3 agenda.

4 Q. And did you ever participate in that kind of  
5 in-service training as a resident care director?

6 A. Yes. I had many in-services.

7 Q. Now, were you -- was anyone else, other than you, to  
8 your knowledge, doing in-service training for the staff  
9 while you were the resident care director?

10 A. The memory care director, Alicia Parga, did  
11 in-services. I believe that the dining manager -- services  
12 manager did in-services. The executive director would do  
13 in-services.

14 Q. Okay. And -- okay. Thank you.

15 MR. REID: If we could pull -- if you wouldn't mind  
16 pulling up Exhibit 32.

17 THE WITNESS: 32?

18 Q. (By MR. REID) Mm-hmm.

19 MR. REID: And with permission, your Honor, I'd like  
20 to display page 78 of Exhibit 32.

21 THE COURT: All right.

22 Q. (By MR. REID) Do you have that in front of you?

23 A. What page is it? Is it just 32 on the --

24 Q. Page 78.

25 A. Okay.

26 MR. REID: May I approach the witness, your Honor?

27 THE COURT: Yes.

28 THE WITNESS: Here. 78. Okay. There we go.

1 Q. (By MR. REID) Okay. What is that document?

2 A. That is a community in-service done across the  
3 region for medication assistants' program. So it was a  
4 med tech training.

5 Q. Okay. Now, in this -- do you see your signature  
6 there?

7 A. Yes.

8 Q. In this particular in-service, were you a trainer or  
9 were you a trainee?

10 A. I was a trainee.

11 Q. All right. Tell us about this -- this training.

12 MS. CLEMENT: Objection, your Honor. It exceeds the  
13 scope.

14 THE COURT: She can answer.

15 THE WITNESS: It was a training for, um, med techs  
16 to do their job. I attended the med tech training to  
17 receive training on how to train others.

18 Q. (By MR. REID) All right. Where did it take place?

19 A. Summerville Hazel Creek, which I believe is Citrus  
20 Heights.

21 Q. Okay. Could you please turn to page seven. You  
22 know, it's forward a ways.

23 A. Seven?

24 (Pause.)

25 THE WITNESS: Mm-hmm.

26 Q. (By MR. REID) Okay. And do you -- what is that  
27 document?

28 A. It is a blank in-service training attendance record.

1 Q. I'm sorry. I apologize. That wasn't the document I  
2 was referring to.

3 A. Okay.

4 Q. So if we could please refer to page 78. I  
5 apologize.

6 A. 78.

7 MR. REID: May we display that page, your Honor?

8 THE COURT: Yes. It's from the same exhibit number,  
9 correct?

10 MR. REID: 32. Exhibit 32.

11 THE COURT: Yes.

12 Q. (By MR. REID) Actually, we're still on -- that's  
13 fine. Let's stay there for a second, because I did have  
14 one follow-up question related to the training you did.

15 Who was the person that performed the training that  
16 you attended at Hazel Creek?

17 A. It was a nurse with Omnicare.

18 Q. And what was Omnicare?

19 A. Omnicare is a large provider of pharmacy -- for  
20 drugs, and just a large pharmaceutical company that often  
21 services skilled nursing facilities, assisted living.

22 Q. All right. While you were the resident care  
23 director at Emerald Hills, what role, if any, did Omnicare,  
24 the pharmacy, pay -- play in auditing the med -- the  
25 med techs at Emerald Hills?

26 MS. CLEMENT: Exceeds the scope, your Honor.

27 THE COURT: Sustained.

28 MR. REID: Could we be heard briefly, your Honor?

1 THE COURT: No. Move on.

2 MR. REID: All right. Let's turn to page 78.

3 You're right. It is.

4 Can you turn to page 81 for me.

5 Q. (By MR. REID) Okay. What is that document, page  
6 81?

7 A. That is an in-service training attendance record for  
8 a medication technician training that I gave.

9 Q. All right. Is that what you were just referring to  
10 a few minutes ago, the med tech training that you did?

11 A. Yes, yes.

12 Q. Gotcha. Very good. Thank you.

13 I want to talk to you -- you were asked questions  
14 about your assessment of Mrs. Boice. So I would like to  
15 ask you to pull up the initial assessment -- well, let's  
16 start with the physician report, which starts on page 19.

17 A. In 32?

18 Q. This is now -- I'm sorry. Exhibit 2.

19 THE COURT: Mr. Lincoln, could I get Exhibit 2,  
20 please. Exhibit 2. Exhibit 2.

21 Q. (By MR. REID) I'm starting at page 19 of Exhibit 2.  
22 Do you have that in front of you?

23 A. Yes, I do.

24 MR. REID: May we display that page, your Honor?  
25 Whoop. You're still looking for it. Sorry.

26 THE COURT: Yes.

27 Q. (By MR. REID) Okay. What is -- what is this  
28 document?

1 A. This is a physician's report. It's called a 602  
2 more commonly. And it is from The Palms assisted living.

3 Q. Okay. Yesterday you testified about Mrs. Boice  
4 coming from The Palms and moving to Emerald Hills.

5 Do you have that testimony in mind?

6 A. Yes, I do.

7 Q. And in your practice, what, if any, significance  
8 would it mean to you if someone is moving from an assisted  
9 living to Emerald Hills?

10 A. It would mean --

11 MS. CLEMENT: Objection, your Honor. Leading.  
12 Lacks foundation.

13 THE COURT: She can answer.

14 THE WITNESS: If they're coming from another  
15 assisted living, they have probably been deemed appropriate  
16 at one time to be in assisted living. But we would still  
17 want to make sure that that was still current.

18 Q. (By MR. REID) Okay. And what -- what familiarity  
19 did you have with the 602 reports as of September of 2008?

20 A. I was very familiar with 602s.

21 Q. And why was that?

22 A. Because we had seen many of them and had many of  
23 them filled out by doctors.

24 Q. Okay. All right. I want to -- now, this one was  
25 done -- on page 19, what was the date of this particular  
26 examination?

27 A. 6/3/08.

28 Q. All right. Okay. Let's flip to page 20, the next

1 page.

2 And the top box, number seven --

3 A. Mm-hmm.

4 Q. -- is "Primary Diagnosis."

5 How would -- what would you -- why would you be  
6 considering, if at all, this particular -- this information  
7 when you're considering a resident for admission?

8 A. Well, there are limitations to who can live in  
9 assisted living or memory care. And we would want to know  
10 what their diagnoses were so that we would know if we could  
11 care for them.

12 Q. Okay. Now, you were asked a question about this  
13 handwritten notation by Dr. Awan.

14 A. Mm-hmm.

15 Q. What does that say?

16 A. Where it says, "Needs to be administered needs"?  
17 I'm not sure.

18 Q. Needs. Does that say "needs" or "meds"?

19 A. Meds. Needs to be administered meds.

20 Q. Or does it say "needs"?

21 MS. CLEMENT: Objection, your Honor. Leading.

22 Q. (By MR. REID) Do you know what it says?

23 MS. CLEMENT: She's already testified to it, your  
24 Honor. It's leading.

25 THE COURT: He's withdrawn the question.

26 "Do you know what it says?" That's the question.

27 THE WITNESS: Yes, I believe I do.

28 Q. (By MR. REID) Okay. Well, let's look at box number

1 eight, the next box.

2 A. Mm-hmm.

3 Q. What's the second box?

4 A. Um, the secondary diagnosis?

5 Q. Yeah.

6 A. What is it?

7 Q. What's that box for typically?

8 A. That's for other -- other issues the patient may  
9 have that are not primary to her condition.

10 Q. In this -- in this instance, what was Dr. Awan using  
11 that box for?

12 MS. CLEMENT: Objection; lacks foundation as to what  
13 Dr. Awan was thinking.

14 THE COURT: Sustained.

15 Q. (By MR. REID) In this instance, what did Dr. Awan  
16 enter in the -- this secondary diagnosis box?

17 A. Dr. Awan wrote: Chronic pain old compression  
18 fracture, morphine sulfate 15 milligrams POQ daily -- or Q  
19 day.

20 Q. Okay. And then what did Dr. Awan note below that?

21 A. That -- what type of supervision is needed. "Needs  
22 to be given her med."

23 Q. "Needs to be given her med"?

24 A. Right.

25 Q. Okay. Let's talk about this -- this -- this -- the  
26 morphine -- well, morphine sulfite -- or sulfate.

27 A. Sulfate.

28 Q. What is that?



1 MS. CLEMENT: It lacks foundation.

2 THE COURT: She can answer, if she can.

3 THE WITNESS: It's a pain medication.

4 Q. (By MR. REID) Okay. And then there's -- there's a  
5 dosage amount.

6 A. Mm-hmm.

7 Q. Then it says "POQ day." Is that what you said?

8 A. Right.

9 Q. What does "POQ day" mean?

10 A. It means by mouth every day.

11 Q. Okay. Can you tell the jury, if you know, whether  
12 an order for POQ day is the same or different from a PRN  
13 medication.

14 A. It is different.

15 Q. How is it different?

16 A. PRN is as needed.

17 Q. All right. Let's go to the next box down, box  
18 number nine. We were talking a little bit about this  
19 before the break.

20 Dr. Awan checked one of these boxes that you  
21 considered in deciding whether Miss Boice could move in?

22 A. Yes.

23 Q. And what box did Dr. Awan check?

24 A. Dementia.

25 Q. Okay. And did that factor into your decision-making  
26 or -- or let me ask it this way. How, if at all, did that  
27 factor into your decision-making about Mrs. Boice moving  
28 in?

1 A. That would place her in our Memory Care Unit, where  
2 she would be observed more often.

3 Q. Okay.

4 A. But we could have people who did have dementia.

5 Q. Okay. Dr. Awan did not check the box "mild  
6 cognitive impairment."

7 What was your understanding of the difference  
8 between the two in September of 2008?

9 MS. CLEMENT: Exceeds the scope.

10 THE COURT: She can answer.

11 THE WITNESS: "Mild cognitive impairment" is the  
12 normal process of becoming forgetful as we age, having a  
13 harder time remembering things. As opposed to dementia,  
14 which is losing short-term memory, not being able to hold  
15 onto memories, and losing from the front back many  
16 different areas of memory, losing the filters in your brain  
17 that controls your thinking and maybe behaviors.

18 Q. (By MR. REID) Okay. Thank you.

19 The next box down is "Contagious or Infectious  
20 Diseases."

21 What did Dr. Awan note?

22 A. "NA," which is commonly known as not applicable.

23 Q. On the next page, box 11 is what?

24 A. Eleven is "Allergies." "None known."

25 Q. The next box, 12?

26 A. There's no comment in "Other Conditions."

27 Q. Okay. And then we get to box 13.

28 Now, just to clarify, when we're talking about

1 physical health status here and the boxes are checked "yes"  
2 and "no," is that some -- information you enter?

3 A. No.

4 Q. Okay. In your practice and understanding, who is  
5 entering that information?

6 A. The doctor.

7 Q. All right. And in terms of motor impairment,  
8 paralysis, what was your understanding of Dr. Awan's  
9 direction concerning Mrs. Boice's needs at that time?

10 A. That she needed a walker and assistance to walk.

11 Q. Okay. Then, the next box on the next page, box 14,  
12 is what?

13 A. It's her mental condition.

14 Q. And what did Dr. Awan note about -- in the box of  
15 "Inappropriate Behavior"?

16 A. "At times a little combative."

17 Q. Okay. How about "able to follow instructions"? Are  
18 you able to read what Dr. Awan wrote there?

19 A. I can. "Most of the time can follow."

20 Q. And then how about under "risk, if allowed, direct  
21 access to personal grooming and hygiene," what was  
22 Dr. Awan -- what was your understanding of Dr. Awan's  
23 direction?

24 A. Needs things like tooth brush, comb, hair brush  
25 setup and needs some help. Needs some --

26 Q. Someone?

27 A. -- someone to help guide her.

28 Q. Okay. Now, when it says -- it says: Comb, hair

1 brush set up (indicating).

2 A. Right.

3 Q. What is your understanding of that term, "set up"?

4 A. That it's put in front of them.

5 Q. Okay. Is that a term of art, or is that common  
6 understanding, or do you know?

7 A. It's -- it was common. If you wanted to set  
8 something up you would set up hair brush and comb, you  
9 would put it in front of them.

10 Q. All right.

11 A. Or their tooth brush and toothpaste.

12 Q. All right. Now, at that time, when you're reviewing  
13 Dr. Awan's 602 form and it says, "Needs someone to help  
14 guide her" --

15 A. Mm-hmm.

16 Q. -- what is -- what, if anything, does that mean to  
17 you in terms of whether Mrs. Boice is totally dependent or  
18 partially dependent in this category?

19 A. Typically, it's -- to help guide her would be to cue  
20 her, to pick up her brush and brush her hair. Sometimes to  
21 help start -- start them doing it and then they would --  
22 they would follow.

23 Q. Okay. So is that -- in your -- as you understand  
24 the concept of total dependence, is what you're describing  
25 total dependence?

26 MS. CLEMENT: Your Honor, it's leading.

27 THE COURT: Sustained.

28 Q. (By MR. REID) Explain to the jury what -- "total

1 dependence" as you understood the term to mean.

2 MS. CLEMENT: Exceeds the scope, your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: "Total dependence" would be someone  
5 who is unable to do anything at all for themselves.

6 Q. (By MR. REID) Okay. The next box on the 602 form,  
7 section 15, is what?

8 A. Fifteen is "capacity for self-care."

9 Q. All right. And in terms of bathing, Dr. Awan's  
10 instructions to you were?

11 A. "Needs help."

12 Q. Okay. And in terms of able to feed self, what did  
13 Dr. Awan write?

14 A. "Needs food cut up..." To --

15 Q. And cues?

16 A. Oh, and -- cut up -- cues to -- I'm not sure.  
17 "Eating, swallowing."

18 Q. What box did Dr. Awan check with regard to "able to  
19 feed self"?

20 A. Yes. And it says, "Cues to continue eating  
21 swallowing."

22 Q. All right. So your understanding of Dr. Awan's  
23 assessment in terms of Mrs. Boice's ability to feed herself  
24 was what?

25 MS. CLEMENT: Leading.

26 THE COURT: Overruled.

27 THE WITNESS: She was able to. She just needed,  
28 again, to be cued, to be reminded to use her spoon or her

1 fork and to chew her food. Sometimes people would pocket  
2 food. They would forget they were eating.

3 Q. (By MR. REID) Okay. The next box on the 602 form  
4 is "Medication Management," correct?

5 A. Yes.

6 Q. And what was -- what was Mrs. Boice's -- according  
7 to Dr. Awan, what was Mrs. Boice's needs in that regard?

8 A. That she was not able to administer her own  
9 prescribed medications. She was not able to use, you know,  
10 glucose machine, oxygen, injections. Not able to store her  
11 own medications.

12 Q. Okay. The next page, category 17 on Dr. Awan's 602  
13 form --

14 MR. REID: Can you get the top part there. There we  
15 go.

16 Q. (By MR. REID) Okay. What is this section of the  
17 602 form?

18 A. "Ambulatory status."

19 Q. Okay. And how, if at all, do you -- would you rely  
20 on this section of the 602 form to determine -- make a  
21 decision about whether it was appropriate to allow  
22 Miss Boice to move in?

23 A. Um, we would not take totally bedridden patients.

24 Q. Okay.

25 A. Unless they were on a -- they had some signed of --  
26 there were exceptions, but it had to be within Title 22.

27 Q. All right. When Dr. Awan did the report and did the  
28 physician's assessment of Mrs. Boice, what did -- what were

1 you relying on of Dr. Awan in this regard?

2 A. Dr. Awan stated that she was non-ambulatory.

3 Q. Okay. And what were the choices available to  
4 Dr. Awan when she filled out the report?

5 A. Ambulatory, non-ambulatory, or bedridden.

6 Q. Okay. Now, Miss Clement was asking you up there  
7 what the definition of "bedridden" is.

8 And do you have a memory?

9 THE COURT: Of the question?

10 MR. REID: I will ask it differently.

11 Q. (By MR. REID) As you sit here today, can you  
12 remember what definition of "bedridden" you were relying on  
13 four-and-a-half years ago?

14 A. Whatever it was saying here.

15 Q. Okay.

16 A. That was my definition.

17 Q. All right. And what -- so does -- does this section  
18 reflect your understanding of what "bedridden" was at that  
19 time?

20 A. Yes.

21 Q. What did "bedridden" mean?

22 A. It means that they were unable to do anything for  
23 themselves. They couldn't turn, reposition, couldn't  
24 transfer. You'd have to use mechanical devices, which we  
25 didn't have.

26 Q. Okay. So this definition is the definition you were  
27 relying on?

28 A. Yes.

1 Q. Okay. And at the time that you assessed Mrs. Boice,  
2 understanding you don't remember the whole process, in your  
3 practice, would you have allowed someone to move in if you  
4 thought that they were bedridden pursuant to this  
5 definition?

6 MS. CLEMENT: Leading.

7 THE COURT: Overruled.

8 She can answer.

9 THE WITNESS: No, I would not have.

10 Q. (By MR. REID) Okay. And then Dr. Awan also checked  
11 another box in this section under section B.

12 What was your understanding of the significance of  
13 that box?

14 A. That if the patient was non-ambulatory, which she  
15 was, meaning she couldn't -- she couldn't leave the  
16 building unassisted, but that she -- she was un --  
17 non-ambulatory both because of her physical limitations and  
18 her mental limitations.

19 Q. And then the next page, the rest of the form is  
20 blank.

21 A. Yes.

22 Q. The next page. And there's an area for comments.

23 In your practice, did you ever see doctors put  
24 comments in that section?

25 A. Yes.

26 Q. All right. Now, when -- on September 12th, 2008 --

27 MR. REID: Thanks. We can get the lights.

28 Q. (By MR. REID) -- what was your role -- describe for



1 us what your role was in the determination of whether  
2 Mrs. Boice would move in or not.

3 A. My determination would be whether she met the  
4 criteria to live in our memory care facility.

5 Q. And did Mrs. Boice move into the Memory Care Unit?

6 A. She did.

7 Q. Why did she move into the Memory Care Unit?

8 A. Her family wished for her to move there and she met  
9 the qualifications to move in.

10 Q. Now, isn't it true that you didn't think that you  
11 could meet her needs?

12 A. No. Not true.

13 Q. Isn't it true that --

14 MS. CLEMENT: Leading, your Honor.

15 Q. (By MR. REID) -- you allowed her --

16 THE COURT: It is leading. Sustained.

17 Q. (By MR. REID) If you had made a determination  
18 that -- on September 12th, when you were doing your  
19 assessment of Mrs. Boice, that she -- her needs could not  
20 be met at the facility, what would have happened?

21 A. I would have said that she's not allowed to move in,  
22 and I would have called my superiors and said, "No, not  
23 appropriate."

24 Q. What role -- well, did anyone at any time -- strike  
25 that.

26 Describe any pressure that was put upon you to admit  
27 residents who were not appropriate at Emerald Hills.

28 MS. CLEMENT: Leading.

1 THE COURT: Sustained.

2 Q. (By MR. REID) What pressure, if any, was put upon  
3 you to admit residents that were improper to Emerald Hills?

4 MS. CLEMENT: Leading.

5 THE COURT: Overruled.

6 THE WITNESS: None. I didn't feel any pressure. I  
7 had a job to do and I made my own decisions based on the  
8 information that I had. If I had anyone that I had  
9 questions about, then I would go up my chain of command to  
10 find out if -- you know, if I was correct in my -- in my  
11 assessment, in my information that I had. Because  
12 essentially, I mean, it was me there making the decision,  
13 but sometimes I needed help to make that decision.

14 Q. (By MR. REID) Thank you.

15 And can you tell the jury whether there -- any times  
16 that you encountered where your -- the people above you,  
17 your superiors -- strike that.

18 While you were the resident care director --

19 A. Mm-hmm.

20 Q. -- was there ever a time that -- that you admitted  
21 someone that you didn't think you could meet their needs?

22 MS. CLEMENT: Leading.

23 THE COURT: She can answer.

24 THE WITNESS: There was never a time that I would  
25 admit -- you know, allow anyone to move in that I didn't  
26 think was appropriate to be there.

27 Q. (By MR. REID) Okay. If you could turn, please, to  
28 page 67. And actually let me take you to the back, the

1 last page of that. So let's go to page 76. Okay?

2 MR. REID: With the Court's permission --

3 THE COURT: What exhibit number are we in?

4 MR. REID: This is still in Exhibit 2, your Honor.  
5 Page 76 of Exhibit 2.

6 THE COURT: That's not the last page.

7 MR. REID: I'm sorry. I guess I'm thinking out  
8 loud. It's the last page of the assessment.

9 THE COURT: Okay. I have it.

10 MR. REID: Would it be okay if we -- would it be  
11 okay to publish that page, your Honor?

12 THE COURT: Yes.

13 MR. REID: Thank you.

14 Q. (By MR. REID) All right. What is this page?

15 A. That is the last page of the appraisal for a  
16 resident to move in.

17 Q. And do you recognize your signature on that?

18 A. Yes, I do.

19 Q. And do you recognize -- what date did you sign that?

20 A. 9/12/08.

21 Q. Okay. Now, in the box below your signature, what is  
22 that box for?

23 A. That is for the resident or responsible party, so  
24 that would be family or the resident themselves.

25 Q. Okay.

26 A. Or a guardian, if they had a guardian.

27 Q. Okay. Now, in your practice -- when doing one of  
28 these assessments, what was your practice in terms of

1 gaining information for your assessment?

2 A. Asking the resident, or family, or guardian.

3 Q. Okay. And were -- was there -- focusing on  
4 residents who, for mental or other reasons, weren't able to  
5 provide information to you in the assessment, did you have  
6 a practice of -- of including other people in the  
7 assessment?

8 A. The family.

9 Q. And what was your practice in terms of working with  
10 the family? Describe that for us.

11 A. Well, typically, the families met with the marketing  
12 director. Because they would come to the community and  
13 want to check it out and see it and --

14 MS. CLEMENT: Objection, your Honor. This exceeds  
15 the scope. It's not related to Mrs. Boice.

16 THE COURT: She can answer.

17 THE WITNESS: So typically the marketing director.  
18 Of course, they'd come in and want a tour. And they would  
19 have a tour and discuss the community. Generally speaking,  
20 the executive director may be involved in that as well.  
21 They might call me in, but usually not. Because usually  
22 there was a first or second visit. They would -- the  
23 marketing person would always talk about what their -- I  
24 mean, she had a knowledge of what their condition or what  
25 was allowed in because --

26 MS. CLEMENT: Objection, your Honor. It lacks  
27 foundation.

28 THE COURT: Sustained.

1 THE WITNESS: Okay. Um --

2 THE COURT: Sustained.

3 MR. REID: Okay. I'll ask another question.

4 Q. (By MR. REID) Once the -- that process took place  
5 and it came to the time for you to do the assessment, tell  
6 us about your practice of including the family in your  
7 assessment.

8 A. The family would be asked all of these questions.  
9 Because if the resident can't verbalize it, then the family  
10 would have to verbalize it.

11 Q. And the -- in this -- I know you don't remember this  
12 specific assessment.

13 Right?

14 A. I do not.

15 Q. So do you know whose initials are in the box under  
16 your signature?

17 A. I don't.

18 Q. Did you ever write in that box where we see initials  
19 under your signature?

20 A. No. I did not.

21 Q. In your practice at Emerald Hills, who would be the  
22 person writing initials in that box?

23 A. The resident or responsible party, which could be  
24 family or guardian.

25 Q. Okay. If you could turn to page MC 67. That's page  
26 one of the assessment.

27 And with regard to responsible legal guardian, that  
28 box there (indicating) --

- 1 A. Yes.
- 2 Q. -- in your practice, where would you get that  
3 information?
- 4 A. From the family or the resident.
- 5 Q. And in this instance, what did you write next to the  
6 box checked, *Durable power of attorney, slash, financial*?
- 7 A. "Eric."
- 8 Q. As you sit here, do you know who Eric is?
- 9 A. From the records, I know that it's the son.
- 10 MR. REID: Okay. Now, if you could pull out.
- 11 Q. (By MR. REID) You've checked a couple -- a few  
12 boxes here on disease and diagnoses.
- 13 A. Mm-hmm.
- 14 Q. What was your practice in terms of deciding which  
15 boxes to check?
- 16 A. The doctor's 602.
- 17 Q. Okay. Which we already went through, right?
- 18 A. Right.
- 19 Q. And then on the next page, box six, what is that box  
20 for?
- 21 A. The list of other diagnoses.
- 22 Q. Not mentioned above?
- 23 A. Correct.
- 24 Q. And when we went through the 602, do you remember  
25 what Dr. Awan had written in that box?
- 26 A. For the secondary diagnosis, it was chronic pain.
- 27 Q. It was the morphine, wasn't it?
- 28 A. Morphine sulfate.

1 MS. CLEMENT: Objection, your Honor. It's leading  
2 and misstates the testimony and the other document.

3 THE COURT: Sustained.

4 Q. (By MR. REID) Okay. All right. Well -- so let's  
5 flip back to the first page.

6 You -- that chronic pain, where -- did you reflect  
7 that somewhere in the diagnoses?

8 A. Not per se. She had arthritis in her lower back.

9 Q. Okay. Now, I'm sorry to keep flipping back and  
10 forth. But let's go to the next page, 68.

11 A. Mm-hmm.

12 Q. And now you were asked about this by Miss Clement.

13 A. Yes.

14 Q. Do you have -- was Miss Boice on medications when  
15 she came to Emerald Hills?

16 A. Yes, she was.

17 Q. All right. And is there a reason that you didn't  
18 fill out the medications on that page?

19 A. Typically, we attach the doctor's signed order for  
20 the medications.

21 Q. Okay. Could you turn, please, to page 41 of  
22 Exhibit 2.

23 What is that document?

24 A. That is the medication clarification signed by  
25 the -- requesting -- it was signed by the doctor.

26 MR. REID: All right. Could you pull up the  
27 signature line there, Miss Ford.

28 Q. (By MR. REID) Okay. Signed by Dr. Awan when?

1 A. 9/12/08.

2 Q. Okay.

3 MR. REID: Now, let's -- let's go ahead and pull up  
4 the list of medications, please.

5 Q. (By MR. REID) What are we looking at here?

6 MS. CLEMENT: Objection, your Honor. It's vague.

7 THE COURT: She can answer.

8 THE WITNESS: This is her list of medications, her  
9 dosage, frequency, how she was to take things.

10 Q. (By MR. REID) All right. Now, in this list of  
11 medications --

12 A. Mm-hmm.

13 Q. -- it says -- well, just -- is there any medications  
14 on this list that were ordered PRN?

15 A. No.

16 Q. When -- so I just want to understand. This page  
17 that we're looking at now, how does that relate to the  
18 blank page on the assessment?

19 A. This would be attached as her medication list.

20 Q. Okay. All right. And so let's go back then to the  
21 assessment. We left off on page 68 of the medical chart.

22 Down in the "allergies" box --

23 A. Mm-hmm.

24 Q. -- what did you write there?

25 A. "NKDA." Which is no known drug allergies.

26 Q. And where did you get that information?

27 A. 602.

28 Q. Okay. Help us understand what that means.



1 A. The doctor's assessment.

2 Q. And then -- and in terms of the medication, the  
3 boxes that you have --

4 MR. REID: If we could see the whole column.

5 Q. (By MR. REID) There's several boxes you have to  
6 choose from on the medications assessment page.

7 A. Correct.

8 Q. Okay. And what -- so what's the first option that  
9 you could select?

10 A. "Self-administer own meds."

11 Q. Okay. And when would you check that box?

12 A. If it was an independent individual who had moved  
13 into the building and they didn't need any assistance.

14 Q. Okay. And how about then the second box down below,  
15 what's that box for?

16 A. The second box is "self-administration assessment  
17 completed." And that would be if there were any questions  
18 regarding if they could manage their own medications.

19 Q. All right. So give me -- can you give us an example  
20 of when you might be checking that box.

21 A. Sometimes a resident might want to do all of their  
22 own medications on their own, but the family might prefer  
23 that we not. Because they would have to remember to do the  
24 refills and all of that and they may not have been doing  
25 that. So then we would do an assessment, generally trying  
26 to convince them that it might be better if we help.

27 Q. Why would --

28 A. Keep all that straight.

1 Q. Why would that be your preference?

2 A. Um, to make sure that they had their medications.

3 Q. And the box you checked was what?

4 A. "Staff to assist in medication administration."

5 Q. All right. The next page of the -- of your  
6 assessment, this top area that says "skin baseline" --

7 A. Uh-huh.

8 Q. -- what is that section for?

9 A. That's when there's a -- an assessment done of  
10 their -- their -- the integrity of their skin.

11 Q. Okay. This is totally blank.

12 A. Yes.

13 Q. What does that mean?

14 A. It means either there wasn't anything to write or  
15 one wasn't done.

16 Q. Okay. How would you get the information to fill out  
17 this section?

18 A. I -- for me to fill it out? I would have to do a  
19 skin assessment.

20 Q. All right. And if a family member is involved in  
21 the assessment, what role, if any, would they play in you  
22 filling out this section?

23 MS. CLEMENT: Leading. Excuse me, your Honor. It's  
24 leading. It lacks foundation this happened with this  
25 patient.

26 THE COURT: Lacks foundation, sustained.

27 Q. (By MR. REID) So let's back up a step.

28 A. Okay.

1 Q. As part of your initial assessment, what efforts do  
2 you make, if any, to find out if the patient has a skin  
3 issue?

4 A. We would ask family or do a skin assessment  
5 ourselves.

6 Q. Okay.

7 A. I would, or the staff would.

8 Q. All right. Very good.

9 Now, the next section down, section ten, has to do  
10 with cognition, correct?

11 A. Yes. Yes.

12 Q. Okay. And you --

13 MR. REID: That's up above.

14 Q. (By MR. REID) I want to understand what information  
15 you're using to check these boxes. Okay?

16 So in your practice, how would you come to decide  
17 which box, if any, you would check in these sections?

18 A. We would base it on the doctor's 602 and ask the  
19 family.

20 Q. Okay. Now -- so the doctor's 602, ask the family.  
21 Anything else?

22 A. Use our own observation skills.

23 Q. So what box did you check under "Memory"?

24 A. "Totally confused."

25 Q. And what box did you check under "Making self  
26 understood"?

27 A. She rarely or never -- "rarely or never understood."

28 Q. Okay. And what did you check under "Ability to

1 understand others"?

2 A. "Rarely, never understands, she mimics."

3 Q. What does that mean, "she mimics"?

4 A. Um, she would repeat what you said. That's what  
5 mimic means.

6 Q. Okay. Now, in your practice, those boxes that  
7 you're checking, how would you account for that information  
8 in making the decision about whether the person should move  
9 in or not?

10 A. That's, um, an observation we would make with regard  
11 to if we would be able to care for her and if we could meet  
12 her needs. Because she was nonverbal or inappropriately  
13 verbal, may not make a difference in how she's cared for.

14 Q. Okay. The next box is "Hearing." And we've got a  
15 zero. And we can probably -- she didn't have a hearing  
16 problem.

17 A. It says zero.

18 Q. Okay.

19 MS. CLEMENT: Well --

20 Q. (By MR. REID) Okay. The next box down below is  
21 communication, slash, speech.

22 What are you assessing here?

23 A. If they can communicate or speak, if they have  
24 minimal difficulty and require occasional cuing, use of  
25 gestures.

26 Q. Okay. Well, let's go to the next page and find the  
27 box that you selected there.

28 You picked the one with the -- with the five. It's

1 punched out from the three-hole punch, but --

2 A. Right.

3 Q. By selecting this box, what does that mean?

4 A. It means that she had severe speech and  
5 communication impairment and required constant cuing and  
6 use of gestures, other communication devices to enhance  
7 communication.

8 Q. Okay. All right. And other than the information  
9 that you've told us previously you would consider and rely  
10 on, is there anything different that you would be relying  
11 on to make that assessment?

12 A. Um, we would talk to family. You know, not just our  
13 observations, but this was something we would -- we would  
14 have discussed with family, whether the -- you know, how  
15 they communicated, what worked best to communicate with  
16 someone who was nonverbal or inappropriately verbal. I  
17 don't know how else to say that.

18 Q. Okay. The next section is 1-C, "Mental Behavioral  
19 Status."

20 And how is it -- how did you come -- in your  
21 practice, how do you come to select which boxes to indicate  
22 there?

23 A. Observation, and asking family if they're at this  
24 level of confusion.

25 Q. Now, I noticed that you selected the box of resist  
26 care with three points.

27 A. Mm-hmm.

28 Q. As opposed to the -- the resist care and six points.

1 A. Mm-hmm.

2 Q. What's the difference?

3 A. The difference could be behavior. There were  
4 residents who, because of their state, would be combative.

5 Q. Okay.

6 A. And if they are not combative but they did resist,  
7 then they were just a three.

8 Q. All right. And -- thank you. That's fine.

9 Then in "Vision" you selected this box with two  
10 points.

11 A. Mm-hmm.

12 Q. Where did you get that information?

13 A. Um, probably from family and realizing that -- you  
14 know, that --

15 MS. CLEMENT: Objection, your Honor. Lacks  
16 foundation.

17 THE COURT: Sustained.

18 Q. (By MR. REID) Let's move on to mobility, ambulation  
19 and locomotion, which is on the next page.

20 Which box did you select for Ms. Boice in this  
21 assessment?

22 A. That she required assistance for mobility to and  
23 from meals, activities, beauty shop, and common areas.

24 Q. Then in gait and balance in your assessment, what  
25 did you select there?

26 A. She has fall episodes, a score of greater than ten  
27 on a fall risk evaluation. And she was monitored for  
28 safety, up to four times a day.

1 Q. As you sit here today, do you have a memory of where  
2 the information came from in terms of history of falls with  
3 Mrs. Boice?

4 A. No, not really.

5 Q. Would you select this box and put a four in there --  
6 would it be your practice to select that if you -- you had  
7 no history of falls?

8 MS. CLEMENT: Leading, your Honor.

9 THE COURT: Sustained.

10 Q. (By MR. REID) Under what circumstances, if any,  
11 would you select this box if you didn't have some history,  
12 some information that the resident had fallen?

13 MS. CLEMENT: It's still leading.

14 THE COURT: Sustained.

15 Q. (By MR. REID) Under what -- what circumstances do  
16 you pick this box?

17 A. If a resident had fall episodes, so that would mean  
18 a history of falls.

19 Q. Okay.

20 A. They would have had to have fallen prior, so that we  
21 could do the fall risk evaluation.

22 Q. Okay. Then the next box is "Transfers."

23 And what was your determination concerning transfers  
24 for Mrs. Boice at that time?

25 A. That she required stand-by assistance with transfers  
26 and maximum assist with transfers.

27 Q. Okay.

28 A. And that refers to only how they move from one

1 surface to another.

2 Q. What does that mean?

3 A. From bed to chair, bed to stand. Down the -- you  
4 know, just -- those are just transfers.

5 Q. Okay. Now, the next section is assistive or  
6 adaptive devices?

7 A. Mm-hmm.

8 Q. What -- what box did you select there?

9 A. Requires daily assistance using assistive or  
10 adaptive device, which is defined as special eating  
11 utensils, wheelchair, electric scooter, motorized cart,  
12 braces and crutches, etcetera.

13 Q. Okay. In the instance of a resident who walked with  
14 a walker, which, if any, of these boxes would you select?

15 MS. CLEMENT: Objection, your Honor. It's leading.

16 THE COURT: It is not leading.

17 MS. CLEMENT: Foundation.

18 THE COURT: But it is -- it is vague. And I'm not  
19 sure what the relevance is to this particular case.

20 Can you rephrase, Counsel.

21 Q. (By MR. REID) Let me just ask. You wrote  
22 "wheelchair" in this box.

23 In your practice, when would you write "wheelchair"  
24 in a box and why?

25 A. If they were in a wheelchair when I evaluated them.

26 Q. Okay. Okay. On the next page is "Dressing." You  
27 selected box five.

28 What does that mean?



1 A. That she required daily personal assistance with  
2 dressing and undressing.

3 Q. Okay. Then the next box is "Personal Hygiene," 2-F.

4 A. Um --

5 Q. Now let me ask you a question.

6 A. Okay.

7 Q. You picked the four points box there, correct?

8 A. Mm-hmm. Yes, I did.

9 Q. And why would you select that box?

10 A. Because that was the definition that worked best for  
11 her. She required partial assistance daily. For personal  
12 hygiene, with preparation and performance due to physical  
13 or cognitive impairment.

14 Q. Okay. Were there occasions when you assessed  
15 residents that were not able to tend to their own personal  
16 hygiene needs?

17 A. Um, we did have some who were on hospice or in a  
18 special wheelchair.

19 Q. Under what circumstances, if any, would you select  
20 this box three, "Requires maximum assistance daily with  
21 personal hygiene"?

22 A. If someone was not able to do anything for  
23 themselves.

24 Q. Okay. The next box is "Bathing and showering."

25 A. Mm-hmm.

26 Q. You selected the box with three.

27 Why would you select that box?

28 A. Apparently, at that time she required stand-by

1 assistance, or assistance in and out of the shower, turning  
2 on and off the water.

3 Q. Okay. And in your practice under what circumstances  
4 would you also select the two point box -- or the two box  
5 here, right below?

6 A. That's if they were not able to help at all with  
7 their own bathing.

8 Q. Okay. Then the next page on the assessment is --  
9 it's 2-H, "Toileting."

10 A. Yes.

11 Q. You selected this box. And you put a seven.  
12 What does it mean by you selecting that box?

13 A. "Maintaining on toilet scheduling with staff  
14 assisting with hygiene tasks" would typically mean that she  
15 was incontinent.

16 Q. Okay. What's a toileting schedule?

17 A. That they would check on her regularly, four to six  
18 times a day, to see if she needed to be changed.

19 Q. Okay. Under what circumstances would you select the  
20 box below the one that you selected?

21 MS. CLEMENT: It lacks foundation. Relevance, your  
22 Honor.

23 THE COURT: She can answer.

24 THE WITNESS: I'm not sure about that. "Requires  
25 complete assistance and difficulty maintaining socially  
26 acceptable hygiene standards." Um, I'm not sure.

27 Q. (By MR. REID) Okay. 2-I is "Nutrition and eating."  
28 What box did you select there?

1 A. A two. That says: Requires assistance, such as  
2 prompting, supervision in opening food and condiment  
3 containers, cutting food, and using eating utensils.

4 Q. All right. And in your practice under what  
5 circumstances would you select the box below which says,  
6 "Requires maximum assistance with meals"?

7 A. If we had to feed them.

8 Q. Okay. The next box is "Medication."  
9 What did you select?

10 A. "Requires assistance with medications and treatments  
11 one to three times per day."

12 Q. Okay. Now, on the second page --

13 MR. REID: You want to go to the next page, please.

14 Q. (By MR. REID) You did -- you selected this box here  
15 with a two.

16 Do you see that?

17 A. Yes.

18 Q. Okay. Do you -- we looked at the list of meds.

19 Well, what does this box reflect, the one that you  
20 selected?

21 A. PRN medications could be Tylenol that may not have  
22 been on the current doctor's order. But we wouldn't have  
23 assisted her with it unless we did have an order. But it  
24 was just to say that we could assist.

25 Q. Okay. When Ms. Boice was admitted, based on your  
26 review, what meds was she on that were PRN, as needed,  
27 meds?

28 A. None.

1 Q. And then number -- you selected this four.

2 A. Mm-hmm.

3 Q. "Medications are received in non-standard format."

4 A. Yes.

5 Q. What does that mean?

6 A. Um, in a assisted living, the medications that were  
7 easiest to count and take care of were in bubble packs,  
8 where you would pop out one at a time and it counted itself  
9 down. And non-standard format would be in the bottle.

10 Q. Okay. Under 2-K, "Diabetic Management," what did  
11 you select there?

12 A. Zero.

13 Q. Why?

14 A. Patient was not diabetic. Or resident. Sorry.

15 Q. Okay. And the next page, you had a one with TB  
16 testing annually; is that correct?

17 A. Correct.

18 Q. What does that mean?

19 A. Residents had to have an annual PPD test for  
20 tuberculosis in order to live there.

21 Q. Let's do the next few boxes together, if we could.

22 A. Okay.

23 Q. It's hospice and home health.

24 There's nothing in those boxes. What does that  
25 indicate?

26 A. Those services were not being used at that time.

27 Q. And then under "Rehabilitation," that box is empty.  
28 Why is that?

1 A. There was no --

2 MS. CLEMENT: Objection, your Honor. It lacks  
3 foundation.

4 MR. REID: I'll rephrase it, your Honor.

5 Q. (By MR. REID) Under what circumstances in your  
6 practice would you put an indication in the box with  
7 "rehabilitation"?

8 A. If there were other services coming in to work with  
9 the resident. That wasn't covered by hospice, home health,  
10 and podiatry.

11 Q. Now, the last page then is -- there's a three for  
12 "Housekeeping."

13 What does that indicate?

14 A. That the resident received daily housekeeping  
15 services.

16 Q. From whom?

17 A. Housekeeper.

18 Q. And then there's a one here for "Additional  
19 laundry."

20 What does that mean?

21 A. Um, that -- we did the laundry once a week. But  
22 some residents who typically had incontinence problems, we  
23 might have to do the laundry more often.

24 Q. Okay.

25 THE COURT: I think we -- are you done with this?

26 MR. REID: Yes.

27 THE COURT: Then let's stop.

28 Ladies and gentlemen, leave your notebooks on the

1 chairs. Remember the admonitions. I'll see you at 1:30  
2 today.

3 THE WITNESS: Can I leave this here, or should I --

4 THE COURT: Yes, please.

5 THE WITNESS: Okay. Thank you.

6 **(The following proceedings were then had in open**  
7 **court, outside the presence of the jury.)**

8 THE COURT: Okay.

9 MS. CLEMENT: Your Honor, may we have a time  
10 estimate, please. We have a witness waiting. And our  
11 schedule for tomorrow -- my staff is writing to me and not  
12 knowing what we're supposed to do for tomorrow.

13 THE COURT: Mr. Reid, do you have a guesstimate as  
14 to how much longer you have with this witness?

15 MR. REID: I really need to go through my notes  
16 because I was intending to do my whole exam. I don't want  
17 to give an estimate that's not accurate, your Honor. But  
18 there is some -- so I'd rather not give a bad estimate.

19 THE COURT: Okay. All right. As long as he's  
20 staying within the scope, there's nothing else I can  
21 provide you with at this point, Miss Clement.

22 MS. CLEMENT: Your Honor, at the -- before we came  
23 back on the record, I asked Mr. Reid if he could tell me if  
24 he had made a decision with regard to our conference last  
25 night in chambers. I got an e-mail from Mr. Murphy wanting  
26 to know what the next steps were. So I just would like to  
27 know if we could have something today in writing from the  
28 defense, if they could communicate some way to me in

1 writing so I could let Mr. Murphy know.

2 THE COURT: All right. The one thing I took away  
3 from that meeting yesterday was that there was one  
4 particular witness that we were going to be focusing on.

5 Correct?

6 MR. REID: Correct.

7 THE COURT: And you have some stuff you were going  
8 to provide and file and serve, correct?

9 MR. REID: That's correct.

10 THE COURT: When do you estimate that you will do  
11 that?

12 MR. REID: Well, actually, I really was wanting to  
13 talk to counsel. She gave me -- you know, came up to me  
14 five minutes into a break. I kind of want to get a sense  
15 of what she'd like to do with that witness. And, also, try  
16 to get a confirmation of the other issues we talked about  
17 in terms of the notice.

18 THE COURT: Are you filing papers on that witness?

19 MR. REID: At this point, yes.

20 THE COURT: Okay. When will they be filed?

21 MR. REID: We can probably have those filed Monday  
22 morning.

23 THE COURT: Why is it taking so long?

24 I thought you had most everything ready anyway by  
25 way of declaration.

26 MR. REID: We do have declarations. Actually, we  
27 need to hone it down. And there was a few other -- a few  
28 more documents that we needed to track down. And I have

1 other partners in my firm working on that. If you --

2 THE COURT: Okay.

3 MS. CLEMENT: Your Honor?

4 THE COURT: As I indicated, we are proceeding with  
5 the trial. You will -- the only problem we have here is  
6 when that witness may be scheduled to be coming in to  
7 testify.

8 Miss Clement, when did you anticipate bringing that  
9 witness in?

10 MS. CLEMENT: I don't know, your Honor. But I got  
11 to tell you, it's really distracting to me to have this  
12 hanging over my head. And the defense saying -- and  
13 they've told us they had everything and they don't have  
14 everything.

15 And, you know, could we please -- I would  
16 respectfully ask, your Honor, that the Court order them to  
17 file whatever it is they're going to file by the end of the  
18 day tomorrow, please. I mean --

19 THE COURT: Well --

20 MS. CLEMENT: -- it took a lot of my weekend when I  
21 should have been preparing for this week. And we have a  
22 big week next week. And, you know --

23 THE COURT: I appreciate that.

24 MS. CLEMENT: -- it's a big charge.

25 THE COURT: I appreciate that.

26 It is difficult when we're in the midst of trial  
27 with all the other things that are going on as well. And  
28 you have -- when were you anticipating filing the response



1 to their brief on the non-economic damage limit?

2 MS. CLEMENT: Well, you know, your Honor, I was  
3 hoping to get to that over the weekend. But, instead, I  
4 spent my weekend on this issue of the charge against me and  
5 their motion to disqualify me and to --

6 THE COURT: But I thought there was someone else in  
7 your office working on that.

8 MS. CLEMENT: Yeah. Well, she jumped in with me on  
9 the other. So...

10 THE COURT: I want your papers by noon on Friday,  
11 and served on Miss Clement, so she can take a look at them  
12 and tell me what timing she thinks she may need --

13 MR. REID: Yes, your Honor.

14 THE COURT: -- in order to address them.

15 I want your papers for the non-economic damages  
16 Monday morning by 9:00 o'clock, so that I can take a look  
17 at that as well.

18 MR. REID: Very good.

19 THE COURT: We'll see you --

20 MS. CLEMENT: And could counsel, please, copy  
21 Mr. Murphy on their brief?

22 THE COURT: Well, you will provide him with whatever  
23 address you wish him to --

24 MS. CLEMENT: I already -- I had done that  
25 previously.

26 THE COURT: Okay. Now, there's apparently something  
27 that both of you -- or at least Mr. Reid wishes to continue  
28 to confer on something about. Perhaps the two of you can

1 take a few minutes now, at the beginning of your lunch  
2 hour, to continue whatever that conversation is.

3 And I'll see you back at 1:30.

4 MS. CLEMENT: Thank you, Judge.

5 (Lunch recess.)

6 (Change of court reporters.)

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1 WEDNESDAY, JANUARY 23, 2013

2 AFTERNOON SESSION

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4 The matter of JOAN BOICE, by and through her  
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus  
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,  
8 Defendant, Case Number 34-2009-00063714, came on regularly  
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the  
10 Superior Court of California, for the County of Sacramento,  
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her  
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
14 BOICE and MARK BOICE, were represented by LESLEY A. CLEMENT,  
15 Attorney at Law; VALERIE DAWSON, Attorney at Law (not  
16 present); ASHLEY BAIRD, Attorney at Law; and SEAN LAIRD,  
17 Attorney at Law.

18 The Plaintiffs, ERIC BOICE and MARK BOICE, were  
19 present.

20 The Defendant, EMERITUS CORPORATION dba EMERITUS AT  
21 EMERALD HILLS, was represented by BRYAN R. REID, Attorney at  
22 Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,  
23 Attorney at Law.

24 Also present on behalf of the Defendant, EMERITUS  
25 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.  
26 McKINNON, Vice President of Legal Affairs; and LISA HULSE,  
27 Vice President Quality & Risk Management.

28 /////

1       **(The following proceedings were then had in open court, in**  
2                   **the presence of the jury.)**

3           COURT ATTENDANT: Judge, I have one that went to the  
4 bathroom.

5           THE COURT: Okay. Everybody can be seated while we  
6 are waiting.

7           COURT ATTENDANT: Come to order. Court is again in  
8 session.

9           MR. REID: Thank you, your Honor.

10          Good afternoon, ladies and gentlemen.

11                   CONTINUED TESTIMONY OF  
12 MARGARET PHALEN STEVENSON, Witness called under Evidence  
13 Code 776 on behalf of the Plaintiffs,

14                   RESUMED REDIRECT EXAMINATION

15 By BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
16 Defendants:

17 Q       Ms. Stevenson --

18 A       Yes.

19 Q       -- um, I wanted to -- I wanted to follow-up on some  
20 questions you were asked about auditing medications. Um, do  
21 you have that testimony in mind?

22 A       Yes --

23 Q       Okay.

24 A       -- I do.

25 Q       If we could -- if you wouldn't mind -- well, first of  
26 all, just could you tell the jury what, if anything, you did  
27 do, um, when it came to auditing the med techs and the  
28 administration of the medications?

1 A I would look over the -- the, um, medical  
2 administration records, the MAR, and, um, see that they were  
3 documenting properly. Um, occasionally, you know, there  
4 would be -- there was a way that they were to do PRN  
5 medications, to put on the book why they would give it, the  
6 patient or the resident was grimacing or something like  
7 that. Um, I would also look over the narcotics count. We  
8 did have controlled substances there such as, um, morphine,  
9 Vicodin, and, um, we needed to keep a narcotic count.

10 Q Okay. So this process of -- of reviewing MARs --

11 A Yes.

12 Q -- how often was it your practice, um, to look at  
13 MARs?

14 A I would glance at them daily, but really to go over  
15 them, probably, um, three or four weeks, every three or four  
16 weeks.

17 Q And, um, was it your practice to look at all of the  
18 residents' charts or would you select a different chart, how  
19 would that work?

20 A Different charts. I couldn't do them all in one day,  
21 so it would just be, um, pulling out random -- random charts  
22 and, um, or their medical record and -- and looking at their  
23 medication records.

24 Q In addition to you, are you aware of anyone else who  
25 would, um, audit the MARs?

26 A Other than the med techs, no.

27 Q Okay. Um, now, focusing on, um, on Mrs. Boice's  
28 record, I want to go over a few things with you. If you

1 wouldn't mind turning to Exhibit 2, and we will start on  
2 page 93.

3 MS. CLEMENT: Objection, your Honor, it exceeds the  
4 scope of the direct.

5 THE COURT: Overruled.

6 THE WITNESS: Is this Exhibit 2?

7 MR. REID: Yes. Mrs. Boice's record from Emerald  
8 Hills. It's MC 93.

9 THE WITNESS: Okay.

10 MR. REID: Okay. Could we display that, your Honor?

11 THE COURT: Yes.

12 MR. REID: Thank you.

13 Q (By MR. REID) All right. What, um, do you rec --  
14 what is this document?

15 A This is a controlled drug record for, um, controlled  
16 medications.

17 Q All right. And in this instance, um, the -- the --  
18 who is the patient?

19 A Um, Joan Boice.

20 Q And what's the medication?

21 A Morphine sulfate, 15 milligrams.

22 Q All right. And, um, the, um -- what is the "date  
23 dispensed", what does that reference?

24 A Um --

25 MS. CLEMENT: Lacks foundation, calls for speculation  
26 as to this witness.

27 THE COURT: We need some foundation as to the  
28 document.

1 MR. REID: Yes, your Honor.

2 THE COURT: Objection is sustained.

3 Q (By MR. REID) What -- what kind of -- what kind of  
4 document is this?

5 A It's a controlled drug -- record for controlled drugs  
6 and it keeps account of, um, the prescription as it comes in  
7 and as it's used.

8 Q Okay. And what experiences did you have with these  
9 documents, this controlled drug record, as the, um, resident  
10 care director at Emerald Hills?

11 A Um, we would go over these documents to make sure that  
12 the amount of medication that -- or I would, that the amount  
13 of medication that was in the med room also agreed with what  
14 was on the page.

15 Q Okay. And in -- in, um, reviewing these records,  
16 working with these records, did you ever come to understand  
17 what this "date dispensed", um, line referenced?

18 A No.

19 Q Okay.

20 A I can't recall.

21 Q All right. Um, how about the frequency line, what  
22 what was -- what does that indicate?

23 A Um, take one tablet by mouth every day.

24 Q Okay. And is that PRN?

25 A No.

26 Q What is one tablet by mouth every day?

27 A That is a daily medication.

28 Q Okay. So if you could pull back, Ms. Ford?

1 Tell us how this -- this -- this document works.  
2 What's happening or what are we seeing going on on this  
3 document?

4 MS. CLEMENT: Objection, it's vague, your Honor.

5 THE COURT: Sustained.

6 Q (By MR. REID) What is -- what -- let's go down to the  
7 line here next to the 33.

8 A Yes.

9 Q And tell the jury what -- what is in -- what this 33  
10 and the writing next to it indicates?

11 A 33 indicates the quantity that we had of that  
12 medication, and so it would start at 33 and count backwards  
13 from there as it was dispensed.

14 Q Okay. So there is the 33 and then it says 9 dash 12.  
15 What does that mean?

16 A That is the date it was given.

17 Q And what does the 8P --

18 A The time; 8:00 p.m.

19 Q And then the initials?

20 A Would be the --

21 Q Hum?

22 A -- would be the med tech's initials.

23 Q Okay. So then the 32, um, what is -- what does that  
24 indicate?

25 A That's the next day the next medication was given and  
26 now you only have 32. You should have 32 on that day. You  
27 are giving the thirty-second medication and counting  
28 backwards from there.



1 Q Okay. Could you pull back out?

2 Um, and how -- what was the process for this counting  
3 of the medication?

4 A It is a controlled substance by law and you have to  
5 have a record of how many you have, um, on hand, that it's  
6 being dispensed properly.

7 Q All right. So -- so there is the 33, 32, 31, then we  
8 jump to that last column up to 30?

9 A Yes.

10 Q Okay. And as we go down the column then, as it goes  
11 down to 20 and 10 and 5, does that mean -- what does that  
12 mean?

13 A That means that each of those days a medication -- a  
14 15 milligram morphine sulfate tablet was given.

15 Q Okay. Now we get down to number 1.

16 A Uh-huh.

17 Q And what's written next to number 1?

18 A 10/14.

19 Q And what does that indicate? What does that mean?

20 A That means that's the last pill.

21 Q Okay. And the 8P --

22 A 8:00 p.m.

23 Q -- means what?

24 A That was when it was given.

25 Q All right. And then some initials next to that?

26 A Med tech's initials.

27 Q Okay. Could you then go to page 92? And let's look  
28 at that -- that 31 in the third column there.

1 A Yes.

2 Q Direct your attention to that.

3 A Uh-huh.

4 Q Um, what's the date next to the 31?

5 A 10/15.

6 Q So when we are comparing the -- the 1 on the -- and  
7 the date on the prior page to this, what is happening here?

8 A Well, the last quantity in this -- in the first  
9 prescription ended on 10/14 and the first -- but you're  
10 counting backwards on the second page, you have -- you are  
11 giving the thirty-first pill because there was a quantity of  
12 31 given from the pharmacy.

13 Q Okay.

14 A So you start at that new date.

15 Q I see.

16 A Which is the next day.

17 Q Okay. So if you could pull back out.  
18 And then we go -- do we go to the top of the fourth  
19 column there next to the 30 and work our way down?

20 A Yes, you do. You're counting backwards. As you take  
21 a pill, you have one less. So you're always going down in  
22 number.

23 Q Okay. And then so we go down to the 1. What's the  
24 date next to the 1?

25 A 11/14.

26 Q Okay. Now I'm going to need you to jump a little bit  
27 in the record --

28 A Okay.

1 Q -- with me and go to page 110.

2 A Okay.

3 Q Okay. Now we're starting up at the top of the third  
4 column here next to the 60, correct?

5 A Yes.

6 Q And, by the way, is this the same medication that we  
7 have been talking about? Has it been the same medication  
8 for each of the pages?

9 A Yes, it has been morphine sulfate, 15 milligrams.

10 Q Okay. Now, my -- I think the -- the last page ended  
11 with 1 and the date was 11/14. Now we have 11/16.

12 A That's right.

13 Q So what would that indicate?

14 A That would indicate that there was a day that was  
15 missed.

16 Q Okay. Um, then as we head down the column we get down  
17 to the 43.

18 A Yes.

19 Q What's the date next to that?

20 A 12/3.

21 Q Okay. And so on 12/3 what -- what happened?

22 A 12/3, um --

23 MS. CLEMENT: Objection, your Honor, lacks foundation  
24 that this witness knows what happened.

25 THE COURT: Sustained.

26 Q (By MR. REID) What, um, as the -- having been the  
27 resident care director, what happened -- what do you know  
28 that happened with regard -- I will ask the question

1 differently.

2 What's your understanding of what happened with this  
3 morphine on 12/3?

4 MS. CLEMENT: Lacks foundation, calls for speculation.

5 THE COURT: Sustained.

6 Q (By MR. REID) What is the number 43 representing?

7 A 43 is, um, the number of the medication. There were  
8 43 pills. It -- it --

9 Q Okay. And what does the 12/3 mean?

10 A The date.

11 Q Which medication -- how many would have been left  
12 after 8:00 p.m. on 12/3 if the ordinary practices were being  
13 followed?

14 A 42.

15 MS. CLEMENT: Lacks foundation, your Honor.

16 THE COURT: Overruled.

17 Q (By MR. REID) How many?

18 A 42.

19 Q Okay. Now, below that there is a notation. Are you  
20 able to read that notation?

21 A Yes.

22 Q What does it say?

23 A It says, res in SNF, S-N-F, skilled nursing facility,  
24 see discharge papers, A. Parga, 12/4/08.

25 Q Okay. And A. Parga, who is that?

26 A Alicia Parga, memory care director.

27 Q All right. Now, if you wouldn't -- if you would  
28 kindly turn to page 109 in Exhibit 2.

1 All right. Um, what is that document?

2 A That is discharge medications form.

3 Q And what is that used for?

4 A That is used if a resident was leaving the building,  
5 being discharged, or it could mean that they were going on  
6 an extended trip or going to be gone for several days. It's  
7 what they left the, um, Emerald Hills with, what medications  
8 they left with.

9 Q All right. And so if we go down to the bottom of the  
10 list of the medications.

11 A Yes.

12 Q Um, how many -- according to Emerald Hills' records,  
13 how many morphine sulfate tablets -- sulfate tablets were  
14 discharged with Ms. Boice when she was moved to the skilled  
15 nursing facility?

16 A 42.

17 Q And at the time of discharge, according to the Emerald  
18 Hills' records, was, um, Mrs. Boice on any PRN medications?

19 A No, according to that record.

20 Q Okay. And just to follow-up on the, um, medical  
21 charting or the pharmacy charting, the MAR. If you could  
22 turn to page 84. Um, I'm not going to have you go through  
23 all of the MARs, but I wanted to ask you some questions to  
24 help us understand how these documents work.

25 A Okay.

26 Q Um, in the left-hand column what -- what -- what's  
27 that left-hand column for?

28 MS. CLEMENT: Exceeds the scope, your Honor, lacks

1 foundation.

2 THE COURT: Overruled.

3 THE WITNESS: Those are the routine medications for  
4 this particular individual with the dosage and the, um,  
5 instruction, the script, the instructions.

6 Q (By MR. REID) Okay. And in the course and practice  
7 at Emerald Hills, where would the information come from that  
8 gets entered in the left-hand column on the MAR?

9 A From a doctor's order.

10 Q All right. If you could pull back out?

11 Now, um, on the top -- on the top line here the --  
12 what's the first medication that we are dealing with there?

13 A That's Lasix, 20 milligrams, take one on Monday,  
14 Wednesday and Friday.

15 Q All right. So we see, um, blanks under some of the  
16 dates and then boxes with initials on other dates. Um, in  
17 the custom and practice at Emerald Hills, how -- how do  
18 we -- what do we understand these boxes and blanks to mean?

19 A Well, the blanks are Tuesdays, Thursdays, Saturdays  
20 and Sundays because the patient, the resident, was to get  
21 medication Monday, Wednesday and Friday, that particular  
22 medication.

23 Q Okay. I see. Then the next, um, then the next box  
24 down is -- is Fosamax, Fosamax?

25 A Right.

26 Q And when it's highlighted -- custom and practice at,  
27 um, at Emerald Hills, why would this whole section be  
28 highlighted next to Fosamax?

1 A A yellow highlighter is used to discontinue a  
2 medication and the note DCD.

3 Q Okay. What -- help us understand this notation in the  
4 box there, what -- what does that say?

5 A It says DCD, which is discharged, 11/5/08, Dr. Awan,  
6 and it was, um, transcribed to the -- to the record by Lynda  
7 Kittle or L. Kittle.

8 Q Okay. Now, as we go down --

9 A Uh-huh.

10 Q -- on this particular month, on the 15th next to the  
11 morphine, um, the box is blank, November 15th; is that  
12 correct?

13 A That's correct.

14 Q Okay. And so when we look at the, um, controlled  
15 substance record --

16 A Uh-huh.

17 Q -- when we put that together, what does that tell you,  
18 having been the, um, resident care director?

19 A It tells me that that medication was not given on that  
20 day.

21 Q Okay. But then when we go down to the next  
22 medication, Colace, 100 milligrams --

23 A Yes.

24 Q -- do you see there is a blank on the 15th of the 5:00  
25 p.m. dose?

26 A Yes.

27 Q So what does that tell you as the resident care  
28 director?

1 A That it was not given that evening.

2 Q Okay. Now, you were asked before, um, by Ms. Clement,  
3 um, about this notion of if it's not written down it didn't  
4 happen. Do you recall that?

5 A I do.

6 Q Okay.

7 MS. CLEMENT: Misstates the question.

8 Q (By MR. REID) Not documented, not done I think is how  
9 it was phrased to you.

10 A That's right.

11 Q Okay. Tell us about that -- that concept in nursing.

12 A In nursing the concept is if you don't document it,  
13 you can't prove that it happened, so it didn't happen.

14 Q Okay. Now, in your experience as a nurse and as a  
15 resident care director, um, were there -- tell us about  
16 those occasions when you did a chart review and you found a  
17 blank box. Did you investigate?

18 A Yes.

19 Q Okay. And in your investigations what kind of  
20 information would you learn in investigating an empty box  
21 like the Colace?

22 MS. CLEMENT: Your Honor, it exceeds the scope, it  
23 lacks foundation, it's not relevant to Mrs. Boice.

24 THE COURT: It is -- the Court needs some  
25 clarification as to the relevancy to Ms. Boice. It does not  
26 exceed the scope because you went into the record-keeping  
27 that she was involved in or reviewed. So if we can, please,  
28 narrow the scope of the question.



1           You can proceed.

2           MR. REID: Yes, your Honor.

3           Q        (By MR. REID) Applying this concept of not  
4       documented, not done to the blank box on the Colace, um,  
5       line, as a resident care director at the time what, um, if  
6       any, conclusions are you able to draw?

7           MS. CLEMENT: Your Honor, it's speculative.

8           THE COURT: We need a foundation. Sustained.

9           Q        (By MR. REID) Do you have a memory of auditing  
10      Mrs. Boice's medical -- MAR?

11          A        I don't.

12          Q        Um, how many MARs would you audit, let's say, per  
13      month when you were the resident care director?

14          MS. CLEMENT: Asked and answered.

15          THE COURT: Sustained. Not how many but -- she said  
16      she did them all.

17          MR. REID: I don't think she did.

18          THE COURT: All right. Ask the question then.

19          MR. REID: Okay.

20          Q        (By MR. REID) On average how many MARs did you, um,  
21      review on a monthly basis?

22          A        On a monthly basis, average would probably be ten.

23          Q        And how would you select which ones you were going to  
24      review?

25          A        It would be based on need. Um, if the patient -- if  
26      the resident was taking, you know, a lot of medications,  
27      complicated medications, if there had been any issues or a  
28      missed medication prior.

1 Q How would you know of a missed medication that might  
2 trigger you to look at the MAR?

3 A Um, typically on -- although I didn't do a full audit,  
4 on a daily basis I would just kind of glance at the day  
5 before or the night before's medications.

6 Q Okay. And referencing the empty box for the Colace  
7 that we saw in Mrs. Boice's record.

8 A Yes.

9 Q Um, if you came across an entry like that as you were  
10 doing your -- your review of the MARs, what was your  
11 practice?

12 MS. CLEMENT: Objection, it's leading and it's an  
13 improper hypothetical as to this witness. There is no  
14 foundation for it.

15 THE COURT: It's overruled.

16 THE WITNESS: Um, my practice would be to contact the,  
17 um, med tech who was supposed to give that medication,  
18 because typically at eight o'clock at night I wouldn't be  
19 there, and, um, call them and find out what -- what  
20 happened, why wasn't it given.

21 MR. REID: Okay.

22 Q (By MR. REID) And, um, um, in -- in doing those  
23 investigations, um, did you ever learn that medications were  
24 given but the box wasn't checked?

25 MS. CLEMENT: Leading.

26 THE COURT: Sustained.

27 Q (By MR. REID) Your investigations, tell us what --  
28 what your investigations led you to as the resident care

1 director?

2 A They were varied. Um, sometimes it would be that they  
3 just said they forgot to mark it. Um, they didn't give it.  
4 They -- we didn't have it. It -- it didn't -- the refill  
5 didn't arrive. There were various reasons.

6 Q Okay. And, um, as the resident care director once you  
7 found this empty box what was your practice with regard to,  
8 um, addressing that -- that circumstance, the empty box?

9 A There would be a discussion about, um, a process  
10 followed that would include, um, making sure that we had  
11 tabs that would tell us when things needed to be refilled so  
12 that they were there in a timely manner.

13 Q Now, earlier today and I think, um, yesterday, you  
14 were asked questions about, um, assessments of Mrs. Boice.  
15 Do you have that in mind?

16 A Yes, I do.

17 Q We spent some time going through your initial  
18 assessment this morning. Um, you also mentioned that there  
19 was, in reviewing the record, a -- a, um -- a different kind  
20 of assessment that was done?

21 A Yes, it was.

22 Q What -- what other assessments are you aware of that  
23 occurred with regard to Mrs. Boice?

24 A Um, our computer program, that was kind of a care  
25 plan, and also re-looking at the patient or the resident,  
26 um, to see if things had changed.

27 Q Okay.

28 A That would be in our computer. It was called Vigilant

1 was our software.

2 Q Vigilan, okay.

3 Your Honor, Exhibit 67, I believe, has been admitted  
4 into evidence, and I would ask permission to display page 1  
5 of that document.

6 If you could get Exhibit 67?

7 THE COURT: Pages 1 through 9 -- I'm not sure how long  
8 that exhibit is -- have been admitted into evidence.

9 MR. REID: Okay. Thank you.

10 THE COURT: Can I have, James, Exhibit 67?

11 MR. REID: Would it be okay to put up the first page  
12 of that exhibit, your Honor?

13 THE COURT: Yes.

14 MR. REID: Thank you.

15 If you could just highlight the top portion of the box  
16 there?

17 Q (By MR. REID) What is -- what is this that we are  
18 looking at?

19 MS. CLEMENT: Objection, lacks foundation.

20 THE COURT: Sustained.

21 Q (By MR. REID) Do you recognize this document?

22 A It is the Vigilan, um, assessment tool that we used in  
23 our computers.

24 Q Okay. And, um, the, um -- this particular page,  
25 Exhibit 67, page 1, um, is -- is this one of the documents  
26 that you reviewed in familiarizing yourself with  
27 Mrs. Boice's circumstances?

28 MS. CLEMENT: Vague as to time.

1 THE COURT: Sustained.

2 Q (By MR. REID) When you testified that you saw Vigilant  
3 assessments earlier this morning, is this one of the  
4 documents you were talking about?

5 A Yes, it is.

6 MS. CLEMENT: Question is still vague as to time.

7 THE COURT: The question is, when did she actually  
8 review it, when Mrs. Boice was at the facility or after.  
9 Let's get into it here.

10 MR. REID: Okay.

11 Q (By MR. REID) Is this a document that you saw at the  
12 time that Mrs. Boice was in the facility, if you recall?

13 A I don't --

14 MS. CLEMENT: Objection, it's leading.

15 THE COURT: She said no or I don't know.

16 THE WITNESS: That's right.

17 Q (By MR. REID) How were the -- tell the -- tell us how  
18 the, um, information was generated for the Vigilant reports?

19 MS. CLEMENT: Objection, it exceeds the scope, your  
20 Honor.

21 THE COURT: It doesn't exceed the scope, but it has  
22 assumptions in it for which there is no foundation at this  
23 time.

24 Q (By MR. REID) Were you involved in inputting  
25 assessment information into the computer system at Emerald  
26 Hills?

27 A Yes, I was.

28 Q Do you -- do you have knowledge as to whether other

1 people were involved in inputting assessment information  
2 into the computer system at Emerald Hills?

3 A Yes, there were others that could do the assessments  
4 in there.

5 Q And, um, was -- when the information got -- what was  
6 the computer system we're talking about?

7 A The software program was called Vigilant.

8 Q And when -- pursuant to your training and use of the  
9 system, um, did you input the information into the system at  
10 or about the time that you made the observations?

11 MS. CLEMENT: Objection, your Honor, it -- it's --  
12 it's speculative as to this document and this witness.

13 THE COURT: I just need some clarification now.

14 Are you asking her general questions about general  
15 Vigilant documents or are you asking her a question about  
16 this specific document?

17 MR. REID: I'm -- we can take this document down. I'm  
18 asking her about the Vigilant documents in general and the  
19 practice.

20 THE COURT: Okay. Can we have the lights, please?  
21 Please rephrase.

22 MR. REID: Yes, your Honor.

23 Q (By MR. REID) On the occasions when you input  
24 information into the Vigilant system, was it the expectation  
25 of Emeritus and Emerald Hills that you input the information  
26 at or about the time that you made the observations?

27 A Yes.

28 Q And as the resident care director was it your

1 expectation that your colleagues, if they were entering  
2 information into the Vigilant system, that they would be  
3 making those entries at or about the time they made the  
4 assessments?

5 MS. CLEMENT: It's speculative, lacks foundation.

6 THE COURT: Well, the question is what is her  
7 expectation. She can answer as to what her expectation was.

8 THE WITNESS: My expectation was -- is that, um, it --  
9 it is done on the day that it's printed on the document.

10 Q (By MR. REID) Okay. And, um, when you entered the  
11 information, um, were you -- were you accurate in entering  
12 the information into the system?

13 A When I would enter information on a Vigilant report,  
14 yes.

15 Q Okay. And was it your expectation that if your  
16 colleagues at Emerald Hills entered information into the  
17 system that they would also be accurate in making their  
18 observations in entering the information?

19 MS. CLEMENT: It's leading.

20 MR. REID: It's foundational, your Honor.

21 THE COURT: Not exactly.

22 Would you please approach?

23 (Sidebar conference was held.)

24 MS. CLEMENT: Thank you, Judge.

25 Q (By MR. REID) How did you learn, um, how to use the  
26 Vigilant system?

27 A There was a manual and, um, also I was instructed by  
28 the executive director.

1 Q Okay. And, um, tell us what you learned by reviewing  
2 the manual and being trained by the executive director?

3 A That the Vigilant report was to be done when someone  
4 moved in or -- or as close thereof and had -- or had a  
5 change in condition. When the first -- when they first  
6 arrived we usually did it then and then a month later.

7 Q Okay. And based on your -- your training with the  
8 executive director and your review of the manual, um, did  
9 you -- what was your understanding of the expectations at  
10 Emerald Hills as to, um, whether the information entered  
11 into the system should be accurate?

12 A It should be accurate. It was a easy program to use.  
13 And, um, you didn't make the decisions --

14 MS. CLEMENT: Objection, your Honor, it's a narrative  
15 at this point.

16 THE COURT: All right. Sustained.

17 MR. REID: Okay. If we -- I would like to, with the  
18 Court's permission, put page 1 of the document back up, your  
19 Honor.

20 THE COURT: Go ahead.

21 Q (By MR. REID) As the resident -- former resident care  
22 director at, um, Emerald Hills, um, what is your  
23 understanding of the date that this, um, assessment was  
24 performed?

25 A Um, 9/30/2008.

26 Q Okay. And on the right-hand column, um, what -- in  
27 that capacity, what's your understanding of the total points  
28 score for this resident?



1 A There were points assigned with regard to care and  
2 also if they were in the memory care they didn't really  
3 accumulate any other points, that was the highest level of  
4 care that we gave.

5 Q Okay. Um, in this instance, um, was there a point  
6 total that was calculated?

7 A Yeah. There appears to be a point total of 47.25.

8 Q Okay. Now, um, if you could pull that back out?

9 As the resident care director formerly at Emerald  
10 Hills, what is your understanding as to this resident's  
11 durable power of attorney?

12 A It says Eric Boice and it has his cell number.

13 Q Okay. And what's your understanding of this  
14 resident's physician?

15 A Dr. Awan at Kaiser.

16 Q And can you tell the jury who Mrs. Boice's physician  
17 was?

18 A Dr. Awan.

19 Q If you could look at page 2 of the document. If you  
20 could bring up the top portion of the document?

21 It may be a little hard to see, but just focusing on  
22 section 1, what is it -- as the former resident care  
23 director at Emerald Hills, what's your understanding of what  
24 is -- was being assessed in this first section for  
25 Mrs. Boice on September 30th?

26 A Um, their ability to understand instructions, if they  
27 are oriented, if they could make decisions.

28 Q All right. And then on the right-hand side it looks

1 like there is a assignment of some points; is that correct?

2 A Yes.

3 Q Um, if you could turn to the third page. And  
4 directing your attention to 3a -- if you can pull up this  
5 section, 3, Ms. Ford?

6 Just looking at 3a, what -- what is your understanding  
7 of, um, of Mrs. Boice's assistance with regard to dressing  
8 and undressing?

9 THE COURT: I think that's 3e.

10 MR. REID: Oh, I think you're right. Thank you, your  
11 Honor.

12 Q (By MR. REID) 3e, um, Mrs. Boice's requirement for  
13 dressing and undressing?

14 A She requires personal assistance with dressing and  
15 undressing.

16 Q Okay. All right. Then down just a little ways in  
17 3k -- which we don't see up here -- what is, um, what is  
18 section 3k indicate?

19 A Resident is not a diabetic.

20 Q And would that -- what does that mean in terms of, um,  
21 of medications for Mrs. Boice? Would she require assistance  
22 with, um, diabetic medications?

23 A No.

24 Q Now, the next box, um, 3i --

25 A Uh-huh.

26 Q -- what is that box?

27 MS. CLEMENT: 3l.

28 MR. REID: Oh, that's right, 3l. Sorry.

1 Q (By MR. REID) What is that box, um, indicative of?

2 A Um, if the resident had special treatments or needs,  
3 pressure ulcer, wound, requires monitoring and assistance  
4 with his or her treatment by appropriate skilled  
5 professional.

6 Q Okay. Now, um, in this instance, um, as of September  
7 30th -- well, let me ask you just a general question. When  
8 it says pressure ulcer slash wound, um, what -- what can --  
9 what does that encompass in terms of, um, skin issues for a  
10 resident?

11 MS. CLEMENT: Objection, your Honor, leading.

12 May we be seen at sidebar, please?

13 THE COURT: Yes.

14 (Sidebar conference was held.)

15 Q (By MR. REID) Okay. Um, Ms. Stevenson -- if we could  
16 put that back up -- directing your attention to 31, and I  
17 want you to focus on the word "wound", okay?

18 A Yes.

19 MS. CLEMENT: Leading, your Honor.

20 MR. REID: I'm -- I'm --

21 THE COURT: It's preliminary. Go ahead.

22 Q (By MR. REID) As the resident care director trained  
23 in, um, preparing and entering Vigilant information, tell the  
24 jury what -- what a wound encompasses in order to trigger  
25 someone to enter information on that line?

26 MS. CLEMENT: Lacks foundation, calls for speculation  
27 as to --

28 THE COURT: Sustained.

1 Q (By MR. REID) Did you receive training with regard  
2 to -- with regard to the Vigilant system what a wound  
3 encompasses?

4 A Yes.

5 Q Okay. And as the resident care director what did  
6 wound encompass for purposes of making entries in a Vigilant  
7 report?

8 A A wound could be anything from a scrape to a pressure  
9 ulcer.

10 Q Okay.

11 A Any kind of wound.

12 Q Thank you.

13 And in this instance, as of September 30th, according  
14 to this document -- can you pull out a little bit -- um,  
15 there was -- were there points assigned in that category?

16 A There were.

17 Q Okay. I want to direct your attention to 4d. What is  
18 that section?

19 A 4d is transportation.

20 Q Okay. And as of, um -- can you pull back out, please?

21 As of September 30th, um, as a resident care director,  
22 what was your understanding as to who would arrange  
23 transportation for Mrs. Boice?

24 A That would be her family.

25 MS. CLEMENT: I'm -- I'm sorry, your Honor, but I'm  
26 confused. Is that based on the witness's personal knowledge  
27 or is that because she is reading off of this document? May  
28 we have clarification, please? Lacks foundation.

1 THE COURT: In the questions could we be perhaps a  
2 little clearer, Mr. Reid, as to what this witness knows from  
3 her own personal knowledge and what she is anticipating  
4 because of some training she might have had.

5 MR. REID: Yes, your Honor.

6 Q (By MR. REID) Um, do you have any personal  
7 recollection of Mrs. Boice in terms of her assessments?

8 A No, I don't.

9 Q All right. So when you answer these questions, what  
10 are you relying on to answer the questions?

11 A I'm relying on the general practices of Emerald Hills  
12 and the training that I received and what these responses  
13 would tell us about them.

14 Q Okay. And when you were the resident care director at  
15 Emerald Hills, did you rely on this type of information in  
16 making decisions and providing care to the residents?

17 A Yes, we did. And I did.

18 Q Okay. Now, I would like to direct your attention to  
19 page 5 of Exhibit 67.

20 When you mentioned on cross-examination by Ms. Clement  
21 that you saw a couple of Vigilant assessments, is this  
22 document that we are looking at one of the documents you had  
23 in mind --

24 MS. CLEMENT: Objection, your Honor --

25 MR. REID -- in answering the question?

26 MS. CLEMENT: -- vague as to time as to when she saw  
27 them.

28 THE COURT: She can answer the question. I think she

1 has already told us the timing of when she may have known  
2 about these documents or knew that they existed.

3 MR. REID: Thank you, your Honor.

4 THE WITNESS: Um, I'm sorry, you will have to repeat  
5 the question.

6 MR. REID: May I ask to have it read back, your Honor?

7 THE COURT: Yes.

8 Brooke.

9 (Whereupon the last question was read back as requested.)

10 THE WITNESS: Yes.

11 Q (By MR. REID) And as the former resident care  
12 director at, um, Emerald Hills, based on this document, um,  
13 what is your understanding as to the date of this Vigilant  
14 re-evaluation?

15 A That it was done on 11/24/2008.

16 Q Okay. And on the other -- across the -- the page from  
17 that, um, was there a total points score assigned based on  
18 your understanding of the document?

19 A There was. It was 100.50.

20 Q Okay. In looking at the general information portion,  
21 um, is, um -- do you have an understanding as to whether the  
22 durable power of attorney and physician are -- are the same  
23 as in September?

24 A Yes, they are.

25 Q Now, I would like you to turn to page 007, page 3 of 5  
26 of the document. In that -- in that box, um, 31, um, in  
27 this instance there is -- there is information about -- it's  
28 not filled out but there is a reference to home health. Do

1 you see that?

2 A Yes, I do.

3 Q Okay. What, um -- as the resident care director at  
4 Emerald Hills, what was your -- or is your understanding of  
5 why that reference was there?

6 A The reference popped up because home health monitor,  
7 home health services and resident progress was, um,  
8 populated into that field.

9 Q Okay. And -- so as of November 24th, 2008, um, um,  
10 with regard to Mrs. Boice, looking at this assessment, um,  
11 what does that mean in terms of home health having  
12 involvement?

13 A That they were involved.

14 Q You were asked questions by Ms. Clement about, um,  
15 reviewing the Kaiser records. Do you remember that?

16 A Yes.

17 Q And, um, having reviewed the Kaiser records, what is  
18 your understanding of who was involved in her care as of  
19 November 24th, 2008?

20 A Home health -- Kaiser home health was involved,  
21 skilled nursing, as well as physical therapy, and I believe,  
22 um, a social worker was involved as well.

23 Q Um, thank you.

24 Ms. Clement also asked you, um, on -- in her  
25 questioning whether you saw any reference in the Kaiser  
26 records that you were promising to be the person providing  
27 care. Do you have that testimony in mind?

28 A I remember that.

1 Q Okay. And, um, tell the jury what you do recall based  
2 on your review of the Kaiser records about what your role  
3 was in Mrs. Boice's care after Kaiser was involved?

4 A Just to monitor, um, the Kaiser nurse and, um, their  
5 involvement with her receiving the skilled care she was  
6 receiving there.

7 Q What was the skilled care that she was receiving from  
8 Kaiser?

9 A It was, um -- the skilled nursing care was for, um,  
10 pressure ulcers in reviewing her chart, and physical therapy  
11 was there initially to see if they could do, um, gait and  
12 strengthening to see if she could walk again.

13 Q And in your experience as the resident care director  
14 at Emerald Hills, um, were there occasions where, um, your  
15 your staff at Emerald Hills, um, coordinated care with  
16 outside providers?

17 MS. CLEMENT: Objection, lacks foundation, calls for  
18 speculation, it's vague, "your staff."

19 THE COURT: Break it down, please.

20 MR. REID: Yes, your Honor.

21 Q (By MR. REID) While you were the resident care  
22 director at Emerald Hills, um, were there ever occasions  
23 that your residents' needs changed such that, um, an outside  
24 entity such as home health got involved?

25 A Yes.

26 Q And, um, what -- can you describe for the jury what  
27 the process was in terms of involving home health at --  
28 your -- your -- your role as opposed to the home health



1 role?

2 MS. CLEMENT: Your Honor, is this as to Mrs. Boice or  
3 some other person?

4 MR. REID: In general.

5 MS. CLEMENT: Relevance.

6 THE COURT: What is the relevance?

7 MR. REID: The relevance is to establish a practice at  
8 Emerald Hills, which the evidence will establish was  
9 followed in this instance.

10 THE COURT: Okay. She can answer it.

11 THE WITNESS: If there was a change in condition,  
12 families were notified. They would, um, go to the doctor.  
13 If the doctor wanted home health, we needed to be involved  
14 because they needed to come into our building, or Hospice or  
15 physical therapy, um, so that we would know who is in our  
16 building interacting with, um, the individuals who lived  
17 there.

18 Q (By MR. REID) Um, when -- in those occasions when  
19 that occurred and home health got involved, um, did --  
20 what -- how, if any at all, did, um, the Emerald Hills care  
21 staff's roles or responsibilities change?

22 A They would, um, of course, be asked to be more  
23 observant about what was going on with, um, the individual  
24 and, um, you know, to -- to let me know, to let the  
25 executive director know if there were any changes between  
26 the visits of a skilled professional so that we could keep  
27 in contact with them.

28 Q Okay. Um, and were there ever times, um, you, as a

1 resident care director, um, observed any training taking  
2 place, um, of your staff concerning someone who has had a  
3 change in condition and home health has gotten involved?

4 MS. CLEMENT: At any time regarding Mrs. Boice?  
5 Relevance.

6 MR. REID: In general.

7 THE COURT: We are going to be here forever.

8 Can we please focus these questions in the relevant  
9 time frame?

10 Q (By MR. REID) Um, you -- how long did you work at  
11 Emerald Hills?

12 A Just under a year.

13 Q And during that year, um, when someone had a change of  
14 condition and home health got involved, were there occasions  
15 where you observed your staff receiving independent training  
16 from the outside home health agencies?

17 A There were some. Um, physical therapy might teach  
18 them to do passive range of motion. Um, they were not  
19 allowed to do wound care or anything like that, but there  
20 were things that they could do.

21 Q Now, I would like to direct your attention to page 66  
22 of the -- of Exhibit 2.

23 A Oh.

24 MR. REID: With permission, your Honor, if I could put  
25 that up on the --

26 THE COURT: Yes

27 MR. REID: -- screen. Thank you.

28 Q (By MR. REID) Do you recognize this document?

1 A Yes.

2 Q What is it?

3 A It's a care alert.

4 Q Okay. And what is a care alert?

5 A Um, if a caregiver of any kind would find a change in  
6 a condition that could cause them to -- to want to let me  
7 know about it, they -- they would process -- go through the  
8 process of, um, submitting a care alert.

9 THE COURT: I'm sorry, where is this in the -- where  
10 is this in the exhibits?

11 MR. REID: It's page 66 of Exhibit 2, your Honor.

12 THE COURT: Of Exhibit 2?

13 MR. REID: Yes.

14 THE COURT: Okay. All right.

15 Q (By MR. REID) Okay. Do you have that in front of  
16 you, Mrs. Stevenson?

17 A Yes.

18 Q All right. All right. So you described a care alert.  
19 We are looking at page 66.

20 Do you have that in front of you now?

21 A I do.

22 Q Um, just tell us how this document is -- it was used  
23 in the ordinary course of -- of, um, business there at  
24 Emerald Hills?

25 A If a -- an employee or a resident, assistant, med  
26 tech, anyone, saw anything that, um, had a concern, that  
27 they had a concern regarding a resident, mostly under these  
28 categories but sometimes they would just write notes about

1 something they observed, um, they would fill this out and  
2 then put it in my in-box.

3 Q Okay. So in this instance, um, what's the date of the  
4 care alert?

5 A 11/30/08.

6 Q All right. And in this -- this middle section here  
7 under "concern", um, what -- what was the caregiver alerting  
8 you to?

9 A A medical concern.

10 Q All right. And what specifically was being  
11 communicated to you at that time?

12 A That she observed, um, numerous skin areas that have  
13 gotten -- that had pressure sores since the last visit with  
14 the nurse and --

15 Q Okay. Let's stop right there.

16 A Okay.

17 Q "Last visit with a nurse", what was your understanding  
18 of the nurse that had last visited? In other words, was  
19 that with you or was that with somebody else?

20 A That was with home health.

21 Q Okay. And then -- so continue on. What were you  
22 being alerted to?

23 A Um, that Ms. Boice had, um, she says, a pressure sore,  
24 um, one on each foot, one on her right butt cheek, right  
25 arm, inside, and she's continually getting red areas that we  
26 are worried will become broken sores as well.

27 Q Okay. Let me just ask you, um, um, as you trained and  
28 worked with the caregivers, um, what expectation did you

1 have in terms of this kind of information getting to you?

2 A That because they were the ones that helped bathe some  
3 of the, um, residents that they would observe if there were  
4 any, um, marks or blanching areas or red spots on their skin  
5 that they thought I might need to know. There was no way I  
6 could -- and there was not an idea that I would go through  
7 every single person and look at them every single day. So  
8 the assistants that gave the showers or cared for them, um,  
9 would -- would let me know if they saw something unusual.

10 Q Okay. Thank you.

11 Now, the bottom portion is where you have input,  
12 correct?

13 A Correct.

14 Q Is this your writing and the details of action taken?

15 A It is.

16 Q Okay. Um, you -- you checked the box yes, that action  
17 was taken, and then down below you are describing what had  
18 happened?

19 A Yes.

20 Q It says -- you wrote -- what did you write here with  
21 regard to home health?

22 A Home health Kaiser was alerted.

23 Q Okay. And stopping right there. Based on your review  
24 of the records, um, as referenced by Ms. Clement, um, did  
25 you -- did you have an understanding that -- that Kaiser  
26 home health was already involved as of November 30th?

27 A Yes, they were.

28 Q So when you wrote "home health Kaiser alerted", what

1 does that mean?

2 A That means that they were notified that we had a care  
3 alert, that there could possibly be more, um, issues with  
4 Ms. Boice's skin.

5 Q Okay. As of what date?

6 A As of 11/30.

7 Q Thank you.

8 And you also noted what in the actions taken?

9 A That Joan moved to skilled nursing facility Foothill  
10 Oaks facility for treatment.

11 Q Do you have a recollection of the date that that  
12 occurred, based on your review of the records?

13 A I believe it was 12/06. I'm not sure.

14 Q Okay. Close.

15 A Okay.

16 Q Thank you. Thank you very much. We can turn the  
17 lights on, Mr. Lincoln. Thank you.

18 Um, I want to follow-up on a few other things that you  
19 were asked yesterday and this morning. One of the -- one of  
20 the things that, um, we saw you say on -- in deposition is,  
21 um, a reference to being overwhelmed. Do you have that in  
22 mind?

23 A Yes.

24 Q And help us understand what that means. What do you  
25 mean when you -- when you said that?

26 A There was a lot of work to do. There was, um, a lot  
27 of paperwork and a lot of staff to oversee. The interaction  
28 with the residents and their families during the day, mostly

1 during the day, some would come in the evening, um, it was a  
2 long day. It was a long day to oversee the, you know, the  
3 care of all of these people.

4 Q Um, what -- what did you do -- what was a typical day  
5 for you at work?

6 A Well, I would go in in the morning and I usually got  
7 there a little bit early and checked in with the med tech to  
8 see if, um, things were going okay or if there were any  
9 issues.

10 And then we would have a -- what was called a stand-up  
11 meeting where the marketing director, dining director,  
12 maintenance director, memory care director, executive  
13 director and I would meet and discuss every day, um, were  
14 there any issues, any problems, any goals we needed to  
15 accomplish, anything at all that we wanted to talk about to  
16 make sure that they were always in touch.

17 And then I would usually go back into the med room to  
18 see if -- if anything had been discussed. Check my office  
19 for the 24-hour report, which was another report I got that  
20 staff could leave, um, if someone refused to take their  
21 shower or their medication or, um, you know, if there were  
22 any problems during -- during the night when I had gone  
23 home.

24 Um, and I would just really, you know, go back into  
25 the med room, see if there was anything going on there. It  
26 was very varied. And going into memory care everyday to see  
27 how they were all doing. It was really nice to visit with  
28 them all.

1 Q You --

2 A It was a nice place.

3 Q You --

4 MS. CLEMENT: Move to strike as non-responsive, your  
5 Honor, the last statement.

6 THE COURT: The last sentence, yes.

7 Q (By MR. REID) So when -- how often would you visit  
8 the Memory Care Unit?

9 A I was in and out of there all day several times a day.

10 Q When, um -- we know -- we heard that the memory care  
11 is a delay egress hallway?

12 A It is.

13 Q Um, was there ever times that you encountered, um,  
14 residents of memory care, um, outside of the Memory Care  
15 Unit?

16 A Occasionally.

17 Q Where would you see them?

18 A In the lobby. The alarm would go off when they would  
19 push the door open. They were not locked in, so they could  
20 push out but an alarm would go off. And, um, we would just  
21 try to gently either guide them in or sit in the living room  
22 for a while with them or just see what their need was.

23 Q This morning you were asked questions about a dementia  
24 resident and their needs, and I want to follow-up on that a  
25 little bit. I think it was Alzheimer's, you were asked  
26 about Alzheimer's patients. Do you have that in mind?

27 A Yes.

28 Q Okay. Um, as you were assessing residents for them to



1 move into Emerald Hills, um, what observations did you make  
2 in terms of levels of dementia and Alzheimer's?

3 A There were many levels. Some just had short-term  
4 memory loss but they could still remember quite a bit and  
5 they could walk around and do for themselves. Um, they  
6 needed a little oversight because they were forgetful, um,  
7 and would forget where their room was and things like that.

8 Um, and it progressed all the way to a resident who  
9 really was pretty much non verbal but could smile or cringe  
10 or respond to a touch. There -- there were all levels of  
11 of, um, memory loss in there.

12 Q Okay. And -- and during the time that you were the  
13 resident care director at Emerald Hills, um, did you  
14 observe, um, the -- the memory care, um, residents to, um,  
15 more heavily weight in any of those levels of dementia?

16 A We did not have as many, um, severe -- that had severe  
17 issues. They -- they were -- they had dementia. They had  
18 Alzheimer's. Some of them could be combative. That always  
19 took a conference, you know, with doctors and families. And  
20 others were just pleasantly demented, you know. They were  
21 just -- they had lost their memories. They couldn't make  
22 any short-term memories.

23 Q Okay. Um, so you told me -- told us about, um, times  
24 when they went through the door and the alarm sounded. Were  
25 there any other occasions that you encountered, um,  
26 residents that lived in memory care in other parts of, um,  
27 the community?

28 A We did have, um -- we did have a couple of residents

1 that I can recall. I can't recall their name, but I do  
2 remember, um, that we had to move them from the assisted  
3 living side into the memory care side as they declined.

4 Q Okay. Um, and, um, what -- describe for us the kinds  
5 of interactions that you would have personally with the  
6 memory care, um, residents?

7 A Um, I'm sorry. (crying.) They were really sweet, and,  
8 um, they were very accomplished people. We had their story  
9 boards up that would say who they were when they were  
10 younger. Some of them were a doctor. Sorry. They were  
11 lovely people. I'm sorry.

12 Q That is okay.

13 A This has brought up a lot of memories of those  
14 people -- of people that lived in Emerald Hills. They were  
15 very sweet. And if you could just get a smile from them or  
16 make them laugh, it was a good day.

17 Q Are you okay?

18 A Yeah, I am. I'm sorry.

19 Q That is okay.

20 Um, I do want to ask you though, why -- why are you  
21 tearing?

22 A Because they were so dear to me. That's not an easy  
23 job to do and to take care of an elderly population and you  
24 have to have the heart for it, you know. It was easier to  
25 work at McDonalds than to work there. You had to have a  
26 heart for it. You had to love them. Some of them were  
27 combative, but they didn't know it. Um, you know, the  
28 families were in distress because it's sad to see your loved

1 one kind of disappear in front of you. But, you know,  
2 they -- they would have good days.

3 And I don't know if it's appropriate to say, but I  
4 kind of have had a theory that if they had a good day  
5 somewhere in themselves they just were better, they were  
6 better for it.

7 Q Okay. Um, well, let's talk about -- you were asked  
8 questions about staffing.

9 A Yes.

10 Q And you -- Ms. Clement, um -- you agreed with  
11 Ms. Clement that it was an obligation for Emerald Hills to  
12 at all times have, um, adequate staff, trained staff to meet  
13 the needs of the residents. Do you have that in mind?

14 A Yes.

15 Q Okay. And I want to talk about, um -- well, I want to  
16 talk about the notion of -- of an emergency -- if an  
17 emergency occurs in Emerald Hills, okay?

18 A Okay.

19 Q Was there -- did you receive training on that?

20 A Yes, we did.

21 Q And, um, so how would it be -- what -- well, tell us  
22 what you were trained on in terms of -- of if an emergency  
23 occurred in the building?

24 A We had a program called Safe in Place. We had fire  
25 doors on all of the floors. The idea is that when, um --  
26 if -- if something happened, if there was some kind of  
27 chemical spill, a fire, or something like that, you could  
28 contain it to one area because the alarm would go off and

1 all of the doors would close.

2 You would take the first people in that area away from  
3 the area to another safe area and then, you know, move them  
4 out of the building in -- in a order that kept them safe and  
5 that the fire department would be called and the fire  
6 department would -- when the fire department showed up,  
7 everyone knew that the fire department was in charge.

8 Q Okay. So, um, you were asked some questions about  
9 staffing on the night shift, the noc shift as it has been  
10 referred to. And, um, when -- you were aware that at night  
11 there was, um, two or three caregivers working?

12 A Correct.

13 Q Okay. Um, so did you have a concern when you were the  
14 resident care director that it wasn't -- the building wasn't  
15 adequately staffed to be safe for the residents?

16 A It -- you know, my personal opinion, I would have  
17 liked to see a lot of people there but it wasn't -- it  
18 wasn't really necessary on a daily basis. They -- they were  
19 safe where they were. There was three people in the  
20 building, um, they could cover each other.

21 Typically most of the patients slept at night or if  
22 they were up in the memory care because they had more  
23 trouble with night and day, they -- they had someone there  
24 to communicate with. But most of them did sleep.

25 Q So let's say at two o'clock in the morning there is a  
26 fire in the memory care kitchen -- because they had a little  
27 kitchenette, right?

28 A Yes.

1 Q How would -- what was the training and the protocol  
2 for, um, protecting those residents in the memory care area?

3 MS. CLEMENT: Your Honor, it exceeds the scope.

4 THE COURT: Sustained.

5 Q (By MR. REID) Well, how would it be safe at two  
6 o'clock in the morning if there was a fire in the kitchen in  
7 the memory care?

8 MS. CLEMENT: Lacks foundation. This witness doesn't  
9 know.

10 THE COURT: Sustained.

11 Q (By MR. REID) Um, yesterday -- well, I want to ask  
12 you some questions about your deposition, okay?

13 A Okay.

14 Q We have seen portions of your deposition. Can you  
15 tell us what it's like -- well, first of all, have -- have  
16 you ever had a deposition before this case?

17 A No.

18 MS. CLEMENT: Your Honor, may be seen at sidebar,  
19 please?

20 THE COURT: Let's continue.

21 MR. REID: Okay.

22 Q (By MR. REID) And, um, can you tell us what it's like  
23 to, um, have depositions taken?

24 A Uncomfortable.

25 Q Why?

26 A Um, well, initially I was asked about something that  
27 was -- I hadn't thought about in a long time and they were  
28 brought -- you know, brought back -- I had to bring back

1 memories that sometimes take a little longer to come back.  
2 And the attorneys that are there are usually stopping and  
3 starting and discussing what's correct to say and what's not  
4 correct to say. Um, it can be a little intimidating. I  
5 felt a little intimidated to be asked over and over again  
6 the same questions that I probably -- I didn't really know  
7 at that time. I didn't recall.

8 Q Um, what do you mean "intimidating"?

9 A Well, I felt that a lot of questions were asked over  
10 and over and over again in different ways and that they had  
11 been answered, but in a deposition you can't really say  
12 that. I just felt put upon to come up with something or it  
13 was just going to continue. And it was long. It was all  
14 day.

15 Q For how many days?

16 A Well, first deposition was one day, and the second  
17 deposition was one day.

18 Q Now, when you gave your deposition, um, were you  
19 represented by counsel?

20 A No.

21 Q Why not?

22 A I -- I didn't want to get in -- I didn't feel I needed  
23 to be protected. I -- I felt -- I just wanted to be neutral  
24 and just answer the questions, tell what I knew.

25 Q Did you feel you had an opportunity to do that in your  
26 depositions?

27 A No. I was asked questions.

28 Q What do you mean?

1 A Well, there is a difference between saying what you  
2 want to say and being asked just to answer a specific  
3 question.

4 Q Um, well, you've indicated that I represent you now?

5 A You do.

6 Q What -- what changed?

7 A Um, after the first deposition, um, the videographer  
8 and transcriber -- I'm not sure what you call it -- um, had  
9 left, and Ms. Clement, um, engaged me in a conversation and  
10 said, Just off the record, and we had this long conversation  
11 in which I shared personal opinions. And, um, when I came  
12 back to the next deposition she started with the information  
13 that I had given her off-the-record as my own personal  
14 opinion, and I felt betrayed. I felt that I couldn't trust  
15 her. So I felt at that point that maybe it was wiser to  
16 have somebody looking out for me.

17 Q Um, when you say you shared personal opinions,  
18 about --

19 A Yes.

20 Q -- Emeritus?

21 A About assisted living in general.

22 Q What do you mean?

23 A Well, it's -- it's kind of a -- it's been around a  
24 long time but it's kind of a newer concept to have these,  
25 um, larger buildings, um, you know, with people who -- you  
26 have independent people, you have people who need some  
27 assistance in their daily -- in their activities of daily  
28 living, and then you have dementia. And, you know, like all

1 things, it's a work in progress to -- to do what we can, to  
2 provide what we can, um, for an aging population where, you  
3 know, our society has changed and people don't stay home  
4 into their aging years. Sometimes they have to live  
5 somewhere, um, where there are other people and not be so  
6 isolated.

7 Q In that off-the-record conversation did Ms. Clement  
8 share any information with you?

9 A She did.

10 Q What did she tell you?

11 A She told me that, um, she thought that, um, Emerald  
12 Hills deserved to be punished, and the way she was going to  
13 punish them by was -- was with money.

14 Q And what was your reaction to that sentiment?

15 A I don't know. I -- I don't know that I had a  
16 reaction. It didn't -- I don't think I just let it sink in.  
17 It was -- you know, I think assisted living is necessary,  
18 and I didn't know what to think, quite honestly. That was  
19 right at the beginning of all of this. That was after my  
20 first deposition.

21 Q Has -- has there ever been a time that you felt that  
22 Emerald Hills should be punished for something?

23 A No.

24 Q Yesterday, um, you mentioned, um, that while you were  
25 working at -- as the resident care director at Emerald Hills  
26 you said -- you -- you kind of shrugged your shoulders and  
27 you said, The residents seemed happy, the families seemed  
28 happy. Do you recall that?



1 A Yes.

2 Q So tell the jury what you're referencing there?

3 A Well, that, in general, you know, this is a group of  
4 lively adults on -- for the most part. Even if they were in  
5 a scooter or using a walker, um, on the assisted living  
6 side, most of them were happy. Some of them were happy to  
7 be grumpy, you know. They were just individuals. And, um,  
8 they were encouraged, um, to participate in everything they  
9 could so that they could have something interesting to tell  
10 their families. And in memory care we did our best for the  
11 individuals in there to bring just a tiny little light to  
12 their life or to their family's life.

13 Q So, um, we have heard a lot of information about, um,  
14 Emerald Hills. When you were the resident care director,  
15 um, what was -- did you have a impression as to whether  
16 people actually liked to live there?

17 MS. CLEMENT: Objection, it's irrelevant, exceeds the  
18 scope.

19 THE COURT: It's irrelevant; sustained.

20 THE WITNESS: They did like to --

21 THE COURT: No. That means --

22 THE WITNESS: Oh, not me. I'm sorry.

23 Got confused.

24 THE COURT: It can be confusing.

25 Q (By MR. REID) Um, do you ever hope to hear from me  
26 again after this case?

27 A No. (Laughing)

28 Q Are you expecting anything --

1 A No.

2 Q -- in return for your testimony?

3 MS. CLEMENT: Your Honor, that is so improper.

4 THE COURT: It's okay. The objection is overruled.

5 THE WITNESS: No.

6 MR. REID: Thank you. That is all of the questions.

7 THE COURT: Let's take our afternoon break. Leave  
8 your notebooks on the chairs. Remember the admonitions.

9 Let's be ready to go at 3:15. I will see you back then.

10 I will need you back on the stand, Ms. Stevenson, at  
11 3:15.

12 THE WITNESS: Thank you.

13 THE COURT: Just come on in and get on the stand.

14 THE WITNESS: Okay. Thank you.

15 **(The following proceedings were held in open court, outside**  
16 **the presence of the jury:)**

17 MS. CLEMENT: Your Honor, should I excuse the witness  
18 who has been waiting all day to get on the stand?

19 THE COURT: I don't know the answer to that. We will  
20 go back to you. I don't know how long you think you will  
21 need with the witness. Then we will have the jurors that  
22 get to ask questions. So I think it depends -- you have a  
23 better idea how long you need.

24 MS. CLEMENT: The problem that I have is that this  
25 witness took a day off work today and she has child care  
26 issues. So I don't know if I start her on the stand today  
27 if she can be here tomorrow.

28 THE COURT: We will work with her. We will work with

1 her. If we start her today and we need to --

2 MS. CLEMENT: We have got witnesses for tomorrow  
3 that --

4 THE COURT: Ms. Clement, there is nothing I can do  
5 about it at this point.

6 MS. CLEMENT: Well --

7 THE COURT: We need to finish each witness as they  
8 come along. I'm happy to work with you. If, in fact, we  
9 need to interrupt somebody's testimony --

10 MS. CLEMENT: Okay. That is what I'm getting at.

11 THE COURT: -- to accommodate somebody --

12 MS. CLEMENT: That is what I'm trying to sort out,  
13 your Honor.

14 The bigger concern I have is the witness for tomorrow  
15 morning who we have been pushing off, pushing off, pushing  
16 off, she keeps -- and she has a -- she has an administrator  
17 job. She has been working with her employer to switch the  
18 days off.

19 THE COURT: I will work with you the best way I can.

20 MS. CLEMENT: Okay.

21 THE COURT: But I cannot control how long each witness  
22 takes.

23 MS. CLEMENT: I understand that, Judge.

24 THE COURT: All right. We are in recess.

25 (Recess.)

26 (Court Reporter switch.)

27

28

1           **(The following proceedings were then had in open**  
2           **court, in the presence of the jury.)**

3           MS. CLEMENT: All right. Okay, Judge. Thank you.

4                               RE CROSS-EXAMINATION

5           BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
6           the Plaintiffs:

7           Q.       Okay. Now, on direct examination with your  
8           attorney, Mr. Reid, you testified that the reason you're  
9           here is you want to assist the jury to hear what happened  
10          during your time at Emeritus so a determination can be made  
11          that is accurate.

12          Do you remember that?

13          A.       Yes.

14          Q.       And in assisting the jury in making a determination  
15          that is accurate, you want to be truthful?

16          A.       I do.

17          Q.       And you want to be truthful at all times, true?

18          A.       True.

19          Q.       Whether you're testifying under penalty of perjury  
20          before our jurors here, true?

21          A.       True.

22          Q.       Or whether you're testifying under penalty of  
23          perjury with a court reporter and lawyers, true?

24          A.       True.

25          Q.       And whether you're just talking to someone, true?

26          A.       True.

27          Q.       So does it make any difference to you as to the time  
28          you tell the truth?

1 A. No.

2 Q. So, in assisting the jury in making that  
3 determination as to what accurately happened during your  
4 time there, your testimony today is that you believe  
5 staffing was adequate, true?

6 A. True.

7 Q. Is that the -- different than your sworn testimony,  
8 where you stated that you were not comfortable with the  
9 amount of staff to take care of the residents who were  
10 there, which was why you left?

11 A. It wasn't why I left. And there were times that it  
12 felt adequate and sometimes it didn't. But, you know,  
13 there were times I pitched in, executive director pitched  
14 in. I've served meals. I've given someone a shower. You  
15 know, there are days people call off. It's tough.

16 Q. Which is your accurate testimony, the testimony you  
17 gave today that staffing was adequate, or the testimony you  
18 gave in your deposition, at page 321, that what got you out  
19 of -- took you out of the building is you were not  
20 comfortable with the amount of staff to take care of the  
21 people who were there?

22 MR. REID: She just answered the question, your  
23 Honor.

24 THE COURT: Overruled.

25 (Pause.)

26 Q. (By MS. CLEMENT) That means you answer the  
27 question.

28 A. Oh, do I?

1 THE COURT: You answer.

2 THE WITNESS: Oh, okay. Sorry.

3 I think it was adequate when I would recall that  
4 there were times staff was talking to me, sitting around,  
5 going on breaks. I mean, there was adequate time. There  
6 were busy times, and there were times where they weren't as  
7 busy.

8 MS. CLEMENT: Move to strike as nonresponsive, your  
9 Honor.

10 THE COURT: Granted.

11 Q. (By MS. CLEMENT) Which is the accurate testimony,  
12 your testimony that you've given today, after you retained  
13 Mr. Reid, Emeritus' attorney, to be your counsel, that the  
14 staffing was adequate, or your testimony in your  
15 deposition, the second day of your deposition, where you  
16 testified, "I was not comfortable with the amount of staff  
17 to take care of the people who were there and that's what  
18 took me out of there"?

19 A. I was comfortable with the amount of staff we had.

20 Q. Okay. So were you lying in your deposition?

21 A. No. I was trying to recall that time period.

22 Q. And you told us at the end of your testimony here  
23 that there was this, you know -- it was hard for you to  
24 remember. It had been so long.

25 A. Mm-hmm.

26 Q. And there was this big delay and you couldn't  
27 remember. And that's why your testimony was so different  
28 in your deposition than it's been today.

1           Is that true?

2       A.       True.

3           MS. CLEMENT:   Okay.   So at this time, your Honor,  
4   with counsel's permission, I'd like to show the witness  
5   Exhibit 60 from the deposition, her deposition notice and  
6   subpoena?

7           THE COURT:   All right.

8           MS. CLEMENT:   It is not a trial exhibit.   It was a  
9   deposition exhibit.

10          THE COURT:   Okay.   What would you like her to do  
11   with respect --

12          MS. CLEMENT:   I would like her to turn to page nine.

13               (Pause.)

14          THE WITNESS:   I'm sorry.   I'm looking for the  
15   numbers on the pages.

16       Q.       (By MS. CLEMENT)   Just go nine pages in.

17       A.       Six.   Seven.   Eight.   Okay.

18       Q.       Okay.   Do you see that you were served a subpoena  
19   for you to appear at your deposition in my office on  
20   October 29th, 2010?

21          MR. REID:   I think the question as phrased calls for  
22   hearsay, your Honor.

23       Q.       (By MS. CLEMENT)   Were you served with a subpoena on  
24   October 29th, 2010?

25       A.       I'm not sure.   I don't see that date on here.

26       Q.       Okay.

27          MS. CLEMENT:   May I help her?

28          THE COURT:   Yes.

1 MS. CLEMENT: Thank you, Judge.

2 THE WITNESS: Oh, here. Okay.

3 Friday, October the 29th?

4 Q. (By MS. CLEMENT) Yes.

5 A. Yes.

6 Q. 2010?

7 A. Yes.

8 Q. And is that your address?

9 A. Yes, it is.

10 Q. And you were the person who received the subpoena?

11 A. Yes, I did.

12 Q. Go to the front first page. Oh. The first page of  
13 Exhibit 60.

14 And when were you subpoenaed to appear, what date?

15 A. The highlighted date says January the 18th.

16 Q. 2011?

17 A. Yes.

18 Q. Okay. So you had almost three months to think about  
19 it, correct?

20 A. Correct.

21 Q. But then actually due to some counsel conflicts,  
22 your deposition actually didn't take place until March 31st  
23 2011, true?

24 A. I don't recall, but...

25 MS. CLEMENT: Counsel, can we have a stipulation  
26 that she was deposed on March 31st, 2010?

27 THE COURT: 2010?

28 MS. CLEMENT: 2011. Thank you, Judge.



1 MR. REID: Sure.

2 THE COURT: All right.

3 Q. (By MS. CLEMENT) So you had six months to think  
4 about it before, true?

5 A. True. I had six months.

6 Q. Okay. And in between your first deposition and your  
7 second deposition, we had -- let's see. June 20th.

8 So you had another three months, true?

9 A. Yes. True.

10 Q. So a total of nine months to think about it, true?

11 A. True.

12 Q. But the difference between then and now is that you  
13 have Mr. Reid, Emeritus' attorney, representing you, true?

14 A. That is a difference.

15 Q. Now, when you talk about that -- you testified today  
16 that you don't -- that you believe staffing was adequate.

17 Did you talk to any of the caregivers, the  
18 med techs, Doris Marshall, about your new opinion, that  
19 staffing was adequate?

20 A. I haven't spoken to anyone from Emerald Hills.

21 Q. Did you review the staffing records?

22 A. (No audible response.)

23 Q. To prepare for your testimony, to say today that  
24 staffing was adequate?

25 A. No.

26 Q. Did you look at the records showing the resident  
27 acuity in the building?

28 A. No.

1 Q. Okay. So, also, in assisting the jury in making an  
2 accurate determination of what you believe is true, which  
3 of the following two bits of testimony you gave us is true?  
4 That you knew and used Vigilant as a service plan because it  
5 was a simple computer program and you had the manual, or  
6 your sworn deposition testimony when I asked you, *Is this*  
7 *the same as a service plan or different*, and you didn't  
8 recall?

9 A. It is true that it is a -- the service plan. As I  
10 had time to think about it, I realized that was what we  
11 referred to as a care plan or a service plan.

12 Q. And is it true, your testimony today, that you would  
13 fill out the Vigilant programs, or is it true what you  
14 testified in your deposition, that you didn't?

15 A. Well, I'm not sure. Because there were at least  
16 three people that could fill them out.

17 MS. CLEMENT: Your Honor, at this time plaintiffs  
18 would seek to play page 209, lines 5 through 15.

19 (Pause.)

20 MR. REID: No objection, your Honor.

21 THE COURT: All right.

22 MS. CLEMENT: Can you dim the lights, please.

23 Thanks.

24 **(The following video excerpt was then played in open**  
25 **court):**

26 Q. Did you ever fill out of one of these Vigilant  
27 resident evaluations --

28 **(Video stopped.)**

1           **(The following video excerpt was then played in open**  
2 **court):**

3       Q.       Did you ever fill out of one of these Vigilant  
4       resident evaluations that goes through and lists task  
5       frequencies, minutes to complete the task, and the number  
6       of personnel and the number of times the task has to take  
7       place?

8       A.       No.

9       Q.       Okay. Do you know who would be doing this?

10      A.       I don't know.

11      Q.       Okay.

12           **(Video stopped.)**

13      Q.       (By MS. CLEMENT) Is it true, in assisting the jury,  
14      that your testimony today, just now, that you had training  
15      on the Vigilant program from Nancy Cordova, or is it true  
16      what you testified to in your deposition, that you had no  
17      training?

18      A.       There was a Vigilant manual that I recall. And  
19      there -- and I did get training from Nancy Cordova.

20           MS. CLEMENT: At this time, we'd seek to play page  
21      216, lines 8 through 10, your Honor.

22           (Pause.)

23      MR. REID: No objection, your Honor.

24      THE COURT: All right.

25           **(The following video excerpt was then played in open**  
26 **court):**

27      Q.       Did you ever have any training on using the Vigilant  
28      program?

1 A. No.

2 (Video stopped.)

3 Q. (By MS. CLEMENT) Now, when Mr. Reid led you through  
4 the Vigilant program that you didn't have any training on,  
5 and that you didn't know if you had actually filled out,  
6 and you never had seen before, you talked about family  
7 transportation and that Mrs. Boice's family was supposed to  
8 be transporting her.

9 A. Yes.

10 Q. Do you remember that?

11 A. Yes.

12 Q. Okay. Do you know what was promised to  
13 Mrs. Boice's -- to Mrs. Boice in her contract with  
14 Emeritus?

15 A. No, I do not.

16 Q. Do you know what Title 22 required Emeritus to do in  
17 that regard?

18 A. No.

19 Q. Did you -- hmm. Okay.

20 Were you answering those questions just relying upon  
21 the preparation that Mr. Reid's team gave you?

22 MR. REID: Objection, your Honor. It's --

23 THE COURT: Sustained.

24 Q. (By MS. CLEMENT) In being truthful with the jury,  
25 you said that you would go and -- into the Memory Care Unit  
26 every day and you'd go around the building and visit all  
27 the residents every day.

28 A. I didn't visit all the residents every day, but I

1 went into the memory care every day several times. And I  
2 managed to see almost all of the residents every day  
3 because they came down to eat, or go to recreation, or...

4 Q. Right. You didn't do rounds, though, right?

5 A. No.

6 Q. Yeah. You didn't do rounds like a nurse would do  
7 and go visit residents?

8 A. Exactly.

9 Q. And that care alert --

10 MS. CLEMENT: Erik, can you put that care alert up  
11 for us. That's Exhibit 2, page 66.

12 Lights please, James.

13 Put it up on the bottom there. No just to the  
14 bottom. We've already seen it all.

15 Q. (By MS. CLEMENT) On your -- you testified that  
16 Kaiser was notified of this on November 30th, 2008.

17 Do you remember that?

18 A. I said that that was the date that was on there and  
19 that the action taking -- taken was home health, Kaiser  
20 alerted.

21 Q. Okay. And that wasn't true, right?

22 A. I don't know. That wasn't the date -- that was the  
23 date that that care alert came to me. I'm not saying that  
24 that's the date. There's no date after my name. I'm not  
25 saying that that's what happened there.

26 Q. Right. Because you didn't actually do anything in  
27 response to this care alert, true? While Mrs. Boice was at  
28 the facility?

1 A. I don't recall, as I told you.

2 Q. Well, let's just look at this.

3 "Joan moved to SNF, Foothill Oaks, for treatment."

4 Had she moved? She didn't move until the 4th,  
5 right? So when you write "moved," doesn't that mean that  
6 she was already gone?

7 A. Yeah. That could have been when I filled that out.  
8 There's no way of knowing.

9 Q. Well, do you usually write the word "moved" --  
10 something in the past tense -- before it happens?

11 A. No.

12 Q. Okay. And when you got this care alert on -- did  
13 you get it on November 30th?

14 A. I don't know. That's the date it has on there.

15 Q. Okay. Did -- the med techs were good about giving  
16 you those care alerts, right?

17 A. Yes.

18 Q. How come you didn't evaluate Mrs. Boice?

19 A. I didn't fill that out. It doesn't say I didn't  
20 evaluate her.

21 Q. Well, where is the documentation that you evaluated  
22 her?

23 A. There was an assessment in the Vigilant on 11/30.

24 Q. No.

25 A. Okay. Well, I don't know. It's whatever that --  
26 whatever the documentation says. Otherwise, I don't  
27 recall.

28 Q. Oh. Because there's no evaluation by you, other

1 than that little one you did on 9/12 when she moved in,  
2 true?

3 A. I --

4 Q. There's nothing that you can swear to,  
5 Mrs. Stevenson, under penalty of perjury, that you actually  
6 authored in this case, other than this note after  
7 Mrs. Boice moved and that evaluation you did on September  
8 12th, true?

9 MR. REID: Your Honor, she -- counsel did not allow  
10 the witness to answer the prior question. And this  
11 question is compound and argumentative.

12 THE COURT: Overruled. She did answer.

13 Can we have the lights, please.

14 THE WITNESS: You'll have to ask the question again.  
15 I've lost track.

16 THE COURT: Michelle, why don't you read it back.

17 MS. CLEMENT: I got it, your Honor.

18 THE COURT: All right.

19 Q. (By MS. CLEMENT) You cannot testify under penalty  
20 of perjury that you did any evaluation of Mrs. Boice while  
21 she was at Emerald Hills, other than the evaluation the day  
22 she moved in, true?

23 A. True.

24 Q. And you looked at that evaluation. And I'm not  
25 going to put it back up there again for the jury and go  
26 through it. But we went through it line by line with  
27 Mr. Reid.

28 He led you through that, true?

1 A. True.

2 Q. That wasn't a care plan, true?

3 A. True.

4 Q. So you testified when you were talking about this  
5 care alert that you did lots of paperwork, true?

6 A. I did. Yes.

7 Q. Where is Mrs. Boice's paperwork from you?

8 A. I don't know.

9 Q. Because you didn't do any, true?

10 A. I don't know.

11 Q. Because you never assessed her, true?

12 A. I don't know.

13 MS. CLEMENT: If we can have the lights back, James.  
14 Thank you.

15 Q. (By MS. CLEMENT) Now, which of the following is  
16 true, your testimony yesterday that you knew the scope of  
17 your job because you had your job description, or your  
18 sworn testimony in deposition, that you recall feeling you  
19 really didn't know the whole scope of your job as the  
20 resident care director?

21 A. I felt I knew my job. Did I know the whole scope?  
22 I'd have to see the whole job description again to answer  
23 that correctly at this time.

24 MS. CLEMENT: Your Honor, we'd seek to play 258,  
25 lines 9 through 13.

26 (Pause.)

27 MR. REID: Your Honor, I believe that's already been  
28 played. Asked and answered.



1 THE COURT: May I see the portion of the deposition  
2 transcript, please.

3 (Whereupon an unreported bench conference was then  
4 had in open court between the Court and counsel.)

5 THE COURT: The objection is overruled.

6 MS. CLEMENT: James, can you get the lights, please.  
7 Thank you.

8 **(The following video excerpt was then played in open**  
9 **court):**

10 Q. Did you feel during the course of your employment  
11 that you didn't really know what the whole scope of your  
12 job was as the resident care director?

13 A. I do recall feeling that way.

14 **(Video stopped.)**

15 Q. (By MS. CLEMENT) Which of the following is true,  
16 your testimony that you knew each person was supposed to  
17 have a care plan/service plan, that you knew that early on,  
18 or your sworn deposition testimony, that it wasn't until  
19 late in your tenure that you found that out?

20 A. I knew that we -- I didn't call it a care plan. It  
21 was the Vigilant plan that talked about how -- what the  
22 needs were of this particular resident.

23 Q. Which is accurate, your testimony that the Memory  
24 Care Unit residents and the rest of the residents in the  
25 building were just sleeping at night, or your testimony  
26 that you had no idea what was going on during the night,  
27 because you weren't there?

28 A. That's what you told me. And I said, yes, I was not

1     there.

2     Q.     That's what I told you?

3     A.     Yeah.

4     Q.     Mm-hmm.

5     A.     I didn't say I didn't know what was going on because  
6     I wasn't there all night. That's what you had said to me.

7             Was that in a deposition?

8     Q.     No. That was here, today.

9     A.     Oh, okay. Well, you said that to me. And I said  
10    that's correct. I was not there at night.

11    Q.     Okay. Did you not mean to agree with that?

12    A.     No, I didn't -- I was not there at night. The only  
13    way I would know something was from the 24-hour report that  
14    the resident assistants would give to me in the morning.

15    Q.     Was it accurate of your testimony you gave today,  
16    when led by Mr. Reid, that you reviewed all subordinates'  
17    records of training to make sure they were properly  
18    trained, or your sworn deposition testimony in which you  
19    said in your tenure as the resident care director you were  
20    not able to ensure that all the memory care staff were  
21    trained per the Department of Social Services' guidelines?

22    A.     I would not know if they were trained per the Social  
23    Services' guidelines, but I knew what Emeritus expected.

24    Q.     Well, Emeritus expected something other than the  
25    Title 22 guidelines?

26    A.     I'm sure they did, but I didn't refer to it as that.

27    Q.     And was it true it's your sworn testimony that  
28    during your tenure as the resident care director, you were

1 unable to conduct in-service meetings to ensure that all  
2 necessary staff -- all necessary training was provided to  
3 the staff?

4 MR. REID: Your Honor, I think that question assumes  
5 facts not established.

6 THE COURT: Assumes facts not established. She's  
7 leading at this point.

8 MR. REID: She's making a reference to something  
9 that was supposedly said in a deposition.

10 THE COURT: And she's saying, *Isn't it true.*

11 The objection is overruled.

12 THE WITNESS: Can you ask the question again.

13 Q. (By MS. CLEMENT) Yeah.

14 What is true, your testimony under Mr. Reid's  
15 questioning, that you reviewed all subordinates' records of  
16 training to make sure they were properly trained, or the  
17 testimony you gave in deposition that -- under your --  
18 during your tenure as the resident care director, you were  
19 not able to conduct in-service meetings to ensure that all  
20 necessary training was provided to the staff?

21 A. They're two different things. When I came on board,  
22 I looked to see if their training was current to that date.

23 Q. Oh. So you looked at that onboarding checklist,  
24 like we had, on all the employees that were working there  
25 then?

26 A. I looked at their training records to see if they  
27 had -- yeah, had looked at all the videos and taken  
28 training classes; that the med techs had their med tech

1 training.

2 Q. Okay. So, for example, that onboarding -- do you  
3 remember that onboarding he put up and took you through --

4 A. I do.

5 Q. -- that Nancy and Jessica and everyone...

6 Okay. So you looked at that to make sure all the  
7 employees had that, true?

8 A. I looked in their charts. I felt comfortable with  
9 it. I don't know -- today, I couldn't tell you if everyone  
10 had every piece of document. But I felt that their  
11 training was adequate, to that point.

12 Q. Okay. So you testified today that you reviewed all  
13 of the employees that were subordinate to you, the  
14 caregivers and the med techs. And you made sure that they  
15 were trained and their training was in their personnel  
16 files, true?

17 A. When I came on board with Emerald Hills, yes.

18 Q. Okay. And so my question is: Did you look to see  
19 their onboarding checklist, if that had been done in their  
20 personnel files?

21 MR. REID: That's asked and answered, your Honor.

22 THE WITNESS: I don't recall.

23 Q. (By MS. CLEMENT) Okay. Did you look to see that  
24 they had the Title 22 required training?

25 MR. REID: That's also asked and answered.

26 THE COURT: Overruled.

27 THE WITNESS: I looked to see if they had the  
28 training that I was instructed was required of them to work

1 there and I was satisfied with that, when I first started  
2 working there.

3 MS. CLEMENT: Move to strike as nonresponsive.

4 THE COURT: Sustained.

5 Q. (By MS. CLEMENT) Did you look to see that they had  
6 the required 22 -- -- did you look to see that they had the  
7 Title 22 required training?

8 A. I did.

9 Q. And did they?

10 A. I remember being satisfied that everyone was up to  
11 date.

12 Q. Okay. So tell us, what is the required Title 22  
13 training for a new employee with a facility that advertises  
14 dementia care, like Emeritus at Emerald Hills?

15 A. Well, I don't recall today.

16 Q. And it's your sworn testimony that when you started  
17 working there you looked at everyone's personnel file and  
18 satisfied yourself that the Title 22 training was done,  
19 true?

20 A. True.

21 MR. REID: Asked and answered.

22 Q. (By MS. CLEMENT) Okay. You said you got there  
23 early every day, true?

24 A. I did.

25 Q. What did that mean? What's early?

26 A. 8:00.

27 Q. And then you went to stand-up meetings, true?

28 A. True.

1 Q. And those stand-up meetings, could you say -- agree  
2 with me that 85 percent to 90 percent of that time was  
3 focused on marketing, move-ins?

4 A. No, I wouldn't say that.

5 Q. Hot leads, warm leads, cold leads?

6 A. Everyone gave their own -- talked about their own  
7 thing. So the marketing person talked about that. I  
8 talked about resident care. Dining talked about dining.

9 Q. Isn't it true that 85 to 90 percent of the time at  
10 the stand-up meetings each day were focused on residents  
11 moving in, whether they had hot, cold, or warm leads?

12 A. That wasn't the focus. That was one of the topics  
13 talked about.

14 MS. CLEMENT: Move to strike as nonresponsive.

15 THE COURT: I think she did respond.

16 Let's move on.

17 MS. CLEMENT: I'm just asking for the percentage of  
18 time spent.

19 THE COURT: I know. Move on, please.

20 Q. (By MS. CLEMENT) And isn't it true that the  
21 remainder of the time was spent on preventing residents  
22 from moving out? You would discuss residents at jeopardy  
23 for moving out?

24 A. No.

25 Q. Isn't it true that you had a actual little flow  
26 sheet that you went down for those stand-up meetings?

27 A. I believe there was. I don't recall what it said,  
28 but we did have some kind of a flow sheet.

1 Q. So you testified that you didn't have any residents  
2 with severe dementia.

3 Do you remember that?

4 A. No. I don't think I said that. I said we had all  
5 aspects of dementia.

6 Q. Okay. But was it your recollection at Emeritus that  
7 the resident population did not have a high acuity?

8 A. In a dementia setting? Dementia is a high acuity.  
9 But as far as if there were those that needed most things  
10 done for them, there weren't that many. They did need help  
11 with their activities of daily living.

12 Q. Isn't it true, Mrs. Stevenson, that at the time that  
13 Mrs. Boice was there, 70 percent of the people that were  
14 living in the Memory Care Unit were rated by Emeritus to be  
15 at the highest level of care?

16 A. I don't know. Don't recall.

17 Q. So you don't actually know what the acuity levels  
18 were in the building when Joan Boice was there, true?

19 A. True.

20 Q. You talked about families being in distress, that  
21 had residents there with dementia.

22 Do you remember that?

23 A. Yes.

24 Q. Those families were vulnerable, weren't they?

25 MR. REID: It's vague, overbroad, and lacks  
26 foundation.

27 THE COURT: Sustained.

28 Q. (By MS. CLEMENT) Wasn't it your experience in

1 meeting with families who had loved ones living there with  
2 dementia that they were relying on you to be truthful with  
3 them?

4 A. Yes.

5 Q. And that they trusted you and Emeritus to be honest  
6 with them?

7 A. Yes.

8 Q. You were shown that Vigilant report. Now, that  
9 Vigilant report that you were shown, I'm not going to shoot  
10 it back up there again. But remember what date it said  
11 Mrs. Boice was admitted?

12 A. It said 9/30.

13 Q. Right.

14 Do you remember the print date on that document,  
15 when it was printed?

16 A. No. I don't.

17 Q. Does August 23rd, 2010 sound familiar to you as the  
18 print date for the Vigilant document?

19 A. It doesn't sound familiar to me.

20 Q. Isn't that what would be written at the bottom of  
21 the document, the date it was printed?

22 A. There could -- any time it was printed there was a  
23 date on the bottom.

24 Q. How did you remember this about Mrs. Boice having  
25 home health care when you didn't remember anything about  
26 her?

27 A. In reviewing the records, I saw the e-mails between  
28 the executive director and the Boice family that --



1 Q. And what about the e-mails to you from Kathleen  
2 Boice?

3 MR. REID: Your Honor, I think that the witness was  
4 still answering the question.

5 THE COURT: Okay. I'm not sure.

6 Were you finished with your answer?

7 THE WITNESS: I guess. Yeah.

8 THE COURT: She was.

9 Q. (By MS. CLEMENT) What about the e-mails from  
10 Kathleen Boice?

11 A. To me?

12 Q. Yes, to you.

13 A. I don't know if they were in there or not. I don't  
14 recall at this second.

15 Q. Do you recall being shown e-mails where Kathleen  
16 Boice was copying you and requesting information from you  
17 and to be kept up to date by you of Mrs. Boice's one  
18 pressure sore that the family knew of on her right  
19 metatarsal head, or just the outside of her right big toe?

20 A. Yes. I do remember -- I remember seeing that.

21 Q. And do you remember that you didn't write back to  
22 her for ten days?

23 A. I may not have, but the executive director and I  
24 were in it together.

25 Q. Isn't it true that neither you nor the executive  
26 director wrote back to the daughter for ten days?

27 A. I don't recall it, but you could show me the  
28 documents.

1 Q. And do you know what Title 22 requires you and  
2 Emeritus to have done when there was a home health care  
3 agency involved in terms of documentation and Mrs. Boice's  
4 chart?

5 A. I don't recall.

6 Q. Do you remember what you -- the kind of supervision  
7 that you were supposed to be providing?

8 A. I don't recall.

9 Q. Do you remember what kind of documentation of a plan  
10 that you were supposed to have in the chart?

11 A. I don't recall.

12 Q. Did you think that what that Vigilant plan showed up  
13 there, the home health agency with no information, that  
14 that was a plan?

15 A. No.

16 MR. REID: It's vague.

17 THE COURT: Overruled.

18 MS. CLEMENT: Can you put up Exhibit 2, page 62.

19 Thank you.

20 Can you make that bigger. Erik, make it all yellow,  
21 please. Thank you.

22 MR. REID: Your Honor, this is beyond the scope of  
23 my questioning.

24 THE COURT: I don't know if it is or not, until I  
25 hear what the question is.

26 MR. REID: All right.

27 Q. (By MS. CLEMENT) You said you gathered information  
28 from the family during the initial evaluation. That would

1 be your practice. Although, you don't remember in this  
2 case, true?

3 A. I typically did not. But the marketing and --  
4 Emerald Hills in general did. Yes.

5 Q. Okay. Is this your handwriting?

6 A. No.

7 Q. Okay. You didn't fill out this Biosketch then,  
8 true?

9 A. No.

10 MS. CLEMENT: Okay. Thank you, Erik.

11 Q. (By MS. CLEMENT) So you testified that you felt  
12 that Mrs. Boice was appropriate because all the Title 22  
13 requirements had been fulfilled regarding her, for her to  
14 be admitted, true?

15 A. At her time of move in, yes.

16 Q. Okay. So did you understand that Title 22 required  
17 that there be an interview of Mrs. Boice before the  
18 contract was signed?

19 MR. REID: That misstates the law, your Honor.

20 THE COURT: Is there a code reference you would like  
21 me to look at, Miss Clement?

22 MS. CLEMENT: Yeah. It will take me a second, your  
23 Honor.

24 (Pause.)

25 MS. CLEMENT: Well, let me see if I can lay a  
26 foundation for this.

27 Q. (By MS. CLEMENT) Was it your understanding that  
28 before a resident be admitted that there needed to be an

1 interview of the resident?

2 A. Yes.

3 Q. That before the resident was admitted that there  
4 needed to be a pre-placement appraisal done by the facility  
5 of the resident?

6 A. Yes.

7 Q. That there needed to be a functional assessment by  
8 the facility of the resident?

9 A. Yes.

10 Q. That there needed to be a current physician's  
11 report, within 30 days?

12 A. I'm not sure about that, but I'll take your word for  
13 it.

14 Q. Well, if that's what the policy of Emeritus was, you  
15 knew you had to follow that, true?

16 A. True.

17 Q. And that there needed to be a service plan created,  
18 true?

19 A. True.

20 Q. And was it your understanding that at that point  
21 then Emeritus could make a decision based upon all of those  
22 assessments whether or not they could meet the needs of  
23 Joan Boice? True?

24 A. I don't know. I -- I would imagine. I don't know  
25 about the service/care plan part of it.

26 Q. And you know from looking at the record that there  
27 was no service plan or care plan developed for Mrs. Boice  
28 at the time that she moved in that was gone over by her

1 family or otherwise, true?

2 A. Not that I saw.

3 MS. CLEMENT: We have one storyboard clip to play  
4 with regard to Mrs. Stevenson.

5 Q. (By MS. CLEMENT) You talked about supervision that  
6 you had with your supervisors. When you had questions, you  
7 could call Folsom, the wellness coordinator there, right?

8 A. I could call any of them.

9 Q. Okay.

10 A. Any of the resident care directors.

11 Q. And the wellness coordinator that you trained with,  
12 she wasn't a nurse, true?

13 A. She was not a nurse at that time.

14 Q. Okay. And the supervisors you had were Doris  
15 Marshall and -- dotted line to Nancy Cordova, true?

16 A. True.

17 MS. CLEMENT: And at this time, your Honor, I would  
18 seek to play the storyboard that we've approved, which is  
19 at page 221, lines 5 through 7.

20 THE COURT: Is there any objection?

21 MR. REID: No, your Honor.

22 THE COURT: All right. Thank you.

23 **(The following video excerpt was then played in open**  
24 **court):**

25 Q. Did you ever have a performance evaluation while you  
26 worked at Emeritus?

27 A. I don't think so, no.

28 **(Video stopped.)**

1 MS. CLEMENT: No other questions.

2 THE COURT: All right. May we have the lights,  
3 please.

4 Mr. Reid.

5 MR. REID: Yes. Thank you, your Honor.

6 FURTHER REDIRECT EXAMINATION

7 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
8 Defendant:

9 Q. Miss Stevenson, I did have some follow-up questions  
10 I want to ask you with regard to your job description  
11 Ms. Clement referenced a few minutes ago. Okay?

12 A. Okay.

13 Q. First of all, if you could pull Exhibit 85 off the  
14 shelf.

15 MS. CLEMENT: Your Honor, I didn't ask about her job  
16 description. I didn't give her and look at the -- exceeds  
17 the scope. Sorry.

18 THE COURT: I don't recall anything specifically  
19 about her job description, Mr. Reid.

20 MR. REID: When she was asking questions about her  
21 testimony and was it true based on her job description or  
22 based upon her testimony -- she made specific reference,  
23 your Honor, to this witness' job description. And I intend  
24 to follow up and talk about the job description.

25 THE COURT: All right. Let me see where you're  
26 going with respect to a portion of the job description.

27 MS. CLEMENT: That -- your Honor, that is not --  
28 that was not the question.

1           THE COURT: What I remember has to do with how much  
2 she understood about her job, the scope of her job, before  
3 she took the job and then later on into the job.

4           So if you want to follow up with her on that alleged  
5 discrepancy, go ahead.

6           MR. REID: Okay. Thank you, your Honor.

7 Q.       (By MR. REID) Would you kindly get Exhibit 85.

8 A.       Uh-huh.

9 Q.       And I'm referencing you to pages five and six of  
10 Exhibit 85.

11           Do you recognize that two-page document?

12 A.       Yes.

13 Q.       What is that two-page document?

14 A.       It is a job description for a resident care  
15 director.

16 Q.       All right. Now, at the time that you took the job  
17 as resident care director at Emerald Hills, did you read  
18 and understand this document?

19 A.       I did.

20 Q.       Did you have any confusion about the document at the  
21 time that you read it?

22 A.       No, I didn't.

23           MR. REID: Your Honor, I would ask permission to put  
24 page 85 -- number five of page 85 up.

25           THE COURT: Go ahead.

26           MS. CLEMENT: It exceeds the scope, your Honor. I  
27 didn't go into this on my --

28           THE COURT: Your objection is overruled. He can put

1 it up.

2 Go ahead.

3 MR. REID: Thank you.

4 Could you pull up the "Purpose" section, Miss Ford.

5 Q. (By MR. REID) Now, Miss Stevenson, the "Purpose"  
6 section, it says: To coordinate and supervise personnel in  
7 the wellness department in accordance with the residents'  
8 needs, state regulations, and Emeritus policies and  
9 procedures.

10 Was that your understanding?

11 A. Yes.

12 Q. And then what else -- continuing on: Maintain  
13 excellent services.

14 Did you understand that to be part of your job?

15 A. Yes.

16 Q. And then it also says: High occupancy and meet  
17 community financial goals.

18 Correct?

19 A. Correct.

20 Q. And -- and at the time that you reviewed this job  
21 description, what was your understanding of your role in  
22 terms of meeting high occupancy and community financial  
23 goals?

24 A. I don't recall.

25 Q. Okay. Was there ever a time when you were the  
26 resident care director that you had an understanding as to  
27 how your -- doing your job would relate to the -- these  
28 goals?



1 A. How my job related to it was just, um, meeting  
2 the -- each individual resident's needs and having them  
3 want to stay there with us.

4 Q. Okay. Your job description also talked about:  
5 Supervise and train wellness staff regarding care  
6 policies and procedures and the wellness program.

7 Correct?

8 A. Correct.

9 Q. Okay. Now, there's the eligibility requirements  
10 then.

11 MR. REID: If you could pull up the essential  
12 functions, Miss Ford, please.

13 Under "clinical" it says: Direct and coordinate  
14 overall resident care plan from move-in to discharge.

15 Do you see that?

16 A. Yes, I do.

17 Q. Did you understand that to be part of your role?

18 A. Yes.

19 Q. And what did you do as the resident care director to  
20 accomplish that directive?

21 A. Um, direct and coordinate.

22 Well, to oversee the resident care from move-in to  
23 discharge and to coordinate the care where I needed to  
24 coordinate the care.

25 Q. What does that mean?

26 A. Well, coordinate it with the caregivers, the  
27 resident assistants, any outside agencies that were coming  
28 in, with the families.

1 Q. Okay. The next bullet point says: Perform licensed  
2 nurse tasks within scope of practice as allowed by state  
3 law.

4 Do you see that?

5 A. Yeah, I do.

6 Q. Okay. Was that something that you did as the  
7 resident care director?

8 A. I would say what I did there was mostly oversee the  
9 medications.

10 THE COURT: Counsel approach, please.

11 (Whereupon an unreported bench conference was then  
12 had in open court between the Court and counsel.)

13 MR. REID: Could you pull back out.

14 Q. (By MR. REID) Miss Stevenson --

15 A. Yes.

16 Q. -- I would ask you to just -- if you would, please,  
17 review to yourself page one and page two of the job  
18 description. And then let us know whether this was your  
19 understanding of your role at the time of your hiring.

20 (Pause.)

21 THE WITNESS: Yes.

22 Q. (By MR. REID) Thank you.

23 A. I did understand this.

24 Q. Thank you.

25 MR. REID: Mr. Lincoln, if you'd turn on the lights  
26 for us. Thank you.

27 Q. (By MR. REID) Okay. You were also asked questions  
28 about e-mail communications with -- that you saw concerning

1 the family.

2 Do you have that testimony in mind?

3 A. Yes, I do.

4 Q. Would you kindly pull Exhibit 2. Sorry to keep  
5 shuffling you that way.

6 (Pause.)

7 Q. (By MR. REID) And I'd like to direct your attention  
8 to page 61.

9 A. Yes.

10 Q. Okay. Do you have that in front of you?

11 A. I do.

12 MR. REID: Your Honor, may we briefly display that  
13 page?

14 MS. CLEMENT: Your Honor, it exceeds the scope.

15 THE COURT: Page 61 of which one?

16 MR. REID: Of Exhibit 2.

17 THE COURT: Can I get Exhibit 2, please.

18 (Pause.)

19 THE COURT: You can show it.

20 MR. REID: Thank you.

21 Q. (By MR. REID) Page 61 of Exhibit 2, is this one of  
22 the e-mails you recall seeing in the chart from your  
23 review?

24 A. Yes.

25 Q. Okay. And the date of this e-mail is Tuesday,  
26 November 18th, 2008?

27 A. It is.

28 Q. All right. And do you recognize this as an e-mail

1 from Miss -- Mrs. Kathleen Boice to you and Nancy?

2 A. Yes.

3 Q. And just very quickly, can you summarize for the  
4 jury what Mrs. Kathleen Boice was communicating to you on  
5 November 18th.

6 MS. CLEMENT: Exceeds the scope.

7 THE COURT: Overruled.

8 THE WITNESS: In general, she was thanking us for  
9 meeting with her and Eric and appreciated the time we took  
10 to hear out their concerns and wanted to stay in touch.  
11 She asked me if I had a chance to talk with Kim regarding  
12 when the nurse will be out to do the evaluation on the  
13 pressure ulcer.

14 Q. (By MR. REID) Okay. And Kim -- the nurse to do the  
15 evaluation. Do you have an understanding as to who Kim  
16 would be affiliated with in this instance?

17 A. Kaiser.

18 Q. And I'd like to direct your attention to page 60.  
19 And the top half -- the bottom e-mail is the e-mail we just  
20 saw. The top half of the e-mail, if you could take a look  
21 at that.

22 A. Mm-hmm.

23 Q. And the date of that e-mail, November 19th, 2008?

24 A. Yes.

25 Q. Okay. And that -- is that -- do you recognize that  
26 as an e-mail from Nancy Cordova back to Mrs. Boice and  
27 Mr. Eric Boice?

28 A. Yes.

1 Q. And you were copied on the e-mail, Emerald Hills,  
2 RCD?

3 A. Yes.

4 Q. Okay. And very, very briefly summarize for the jury  
5 what Miss Cordova was communicating back to the Boice  
6 family.

7 A. She was communicating that she was glad we got the  
8 opportunity to discuss our partnership and care and to feel  
9 free to share their feedback so that we could do a better  
10 job.

11 Q. Okay.

12 A. And she said I would update her about Kim and the  
13 home health nurse visit.

14 MS. CLEMENT: Can we have a clarification on who "I"  
15 is, your Honor?

16 THE WITNESS: "I will have Peggy." I guess it's the  
17 author.

18 Q. (By MR. REID) The author. Nancy will have Peggy  
19 update you on Kim? Is that what we're talking about?

20 A. Yeah.

21 Q. Okay. Could I direct your attention, please, to  
22 page 59 of the record.

23 And do you recognize this as being a second e-mail  
24 on the 19th, from Ms. Cordova to Miss Kathleen Boice?

25 A. Yes.

26 MS. CLEMENT: Are we on page 59?

27 MR. REID: 59.

28 THE COURT: 59.

1 THE WITNESS: Yes.

2 MS. CLEMENT: Thank you.

3 Q. (By MR. REID) And you were copied on the e-mail?

4 A. Yes.

5 Q. All right. And what is -- what was Miss Cordova  
6 communicating to Miss Kathy Boice on November 19th?

7 A. That home health was -- was there. That Nancy had  
8 called hospice. An order was needed from Dr. Awan. And  
9 that the home health nurse who had a back line to Dr. Awan,  
10 because they were Kaiser, had called. And Dr. Awan would  
11 be back the next day. Um, the home health nurse did her  
12 visit. The foot doesn't appear infected. And it says: We  
13 also spoke with Misty while Joyce was here. So we're all  
14 on the same page and will update you tomorrow.

15 Q. Okay. Thank you.

16 Now, if I could direct your attention to page 58.  
17 The bottom e-mail is the one you just referenced.

18 Directing your attention to the top part of the  
19 e-mail.

20 A. Yes.

21 Q. And do you recognize that as an e-mail from  
22 Ms. Kathleen Boice to you and to Miss Cordova, again, on  
23 the 19th, at 4:21 p.m.?

24 A. Yes.

25 Q. And what -- what's your understanding of what  
26 Miss Kathleen Boice was communicating to you that  
27 afternoon?

28 A. She was thanking Nancy for the information. She

1 said that Misty had called her to confirm that -- that the  
2 family wanted to make mom hospice eligible, and that she  
3 was in support of it. But that we did not know if the  
4 State would approve having her -- I am going to assume,  
5 there. And thanking us for contacting Joyce, Misty,  
6 Dr. Awan's office, and the State.

7 Q. Okay.

8 A. And that Eric felt good about it, too.

9 Q. Do you know, as you sit here, who Misty is?

10 A. I do. She's the medical social worker for Kaiser.

11 Q. Okay. And do you know who Joyce is?

12 A. Joyce is the nurse, the skilled nurse, home health  
13 nurse.

14 Q. Okay. Thank you.

15 Now, I'd like to direct your attention to page 56.  
16 And the top -- the bottom two e-mails are repeats of the  
17 ones we've read. The top e-mail, if you could take a look  
18 at that.

19 Do you recognize that as an e-mail from Miss Cordova  
20 to Mrs. Boice and copied to you the next day, November  
21 20th, at 3:33?

22 A. Yes.

23 Q. Okay. And what is your understanding of what  
24 Miss Cordova was communicating to Mrs. Kathleen Boice at  
25 that time?

26 A. Um, she was telling Mrs. Boice that I was playing  
27 phone tag with Misty; that Kim was here earlier and  
28 supervised -- and she supervised -- Nancy is saying she

1 supervised some training with the resident assistants,  
2 mostly range of motion and repositioning.

3 Q. Okay. Let me stop you there.

4 A. Okay.

5 Q. Do you know who Kim is?

6 A. She's a physical therapist.

7 Q. With who?

8 A. Kaiser.

9 Q. Okay. And this training of mostly range of motion  
10 and repositioning, what, as the resident care director, did  
11 you understand that to mean?

12 A. Um, that they were taught how to do range of motion  
13 exercises with the patient -- with the resident and  
14 repositioning her.

15 Q. Okay. And what would be -- what was your  
16 understanding as to why they would be doing those things?

17 A. My understanding was that there was an order from  
18 the doctor to try to increase her mobility. And that was  
19 what he had written on there, strengthening.

20 Q. Okay. After that, did Ms. Cordova make any  
21 reference to Mrs. Boice's mood that day?

22 A. She was smiling and participating.

23 Q. Okay. And what else was communicated from Nancy  
24 Cordova to Mrs. Kathleen Boice at that time?

25 A. That she -- that Nancy would let her know when we  
26 heard back from Kaiser regarding a hospice evaluation.

27 Q. Okay. Turning to page 54. And, again, all the  
28 previous ones are repeats. So let's look at the top e-mail



1 on that page.

2 A. Yes.

3 Q. And do you recognize that as an e-mail back from  
4 Miss Kathleen Boice the afternoon of Thursday, November  
5 20th, at 3:44, to you -- to you, the RCD, and to Nancy?

6 A. Yes.

7 Q. Okay. And what is your understanding of what  
8 Miss Kathleen Boice was communicating to you two at that  
9 time?

10 A. Miss Boice was thanking us for the update and stated  
11 that Misty had called -- Misty, the social worker, had  
12 called her and said that we had heard back from our contact  
13 at the state, and they said it was okay to keep Mrs. Boice  
14 at Emerald Hills with hospice care. Misty had left a  
15 message with Dr. Awan's office to request an order for  
16 hospice care. Dr. Awan -- she told Dr. Awan that the  
17 family is behind the concept of pursuing hospice. And she  
18 will continue to do so until hospice receives the request  
19 and sends out their evaluator. She also said something  
20 about her -- her father doing better. And thanking her for  
21 supervising -- for supervising the training Kim provided to  
22 the resident assistants. She was glad that Mrs. Boice was  
23 a willing participant.

24 Q. Okay. Now, we saw the --

25 MR. REID: Thank you. And we can have the lights,  
26 Mr. Lincoln. Thank you very much.

27 Q. (By MR. REID) The -- based on your review of the  
28 record, we saw the care alert dated November 30th, where --

1 remind the jury what that care alert communicated.

2 A. It was from Heather Dunlap, one of the resident  
3 assistants in memory care. And she was alerting us to the  
4 fact that there appeared to be more skin issues with  
5 Mrs. Boice.

6 Q. Okay. And based on your review of the record, was  
7 there a time when a decision was made against hospice and  
8 for something else?

9 A. In my review --

10 MS. CLEMENT: Objection, your Honor. It lacks  
11 foundation.

12 THE COURT: Sustained.

13 MS. CLEMENT: It also exceeds the scope of my cross.

14 THE COURT: I'm sorry. I can't hear you.

15 MS. CLEMENT: It also exceeds the scope of my cross.

16 THE COURT: Well, the objection was sustained.

17 Q. (By MR. REID) Now, I just want to briefly follow up  
18 on your deposition.

19 Between the time you got served with your deposition  
20 subpoena and the time of your deposition, what did you do  
21 to prepare for the deposition?

22 A. Very little. I hoped it would go away.

23 Q. Did -- did you -- did you know what you were going  
24 to be asked in the deposition?

25 A. No idea.

26 Q. Did you look at any doc -- records or anything?

27 A. None.

28 Q. What do you mean you "hoped it would go away"?

1 A. I guess -- I just had never been involved in  
2 something like that. And I just hoped that it wouldn't  
3 come to a place where it would have to -- there would have  
4 to be a deposition.

5 Q. After the first deposition, and between the first  
6 and second, what did you do to refresh your memories or  
7 prepare for the deposition?

8 A. I did nothing. I thought about Emerald Hills. I  
9 could see the first deposition.

10 Q. Do you recognize -- Miss Clement went through some  
11 things that appear inconsistent.

12 Do you recognize that?

13 A. Yes, I do.

14 Q. And tell us what your reaction to the  
15 inconsistencies are.

16 MS. CLEMENT: Relevance, your Honor.

17 THE COURT: What is the relevance?

18 MR. REID: Her state of mind. Her credibility has  
19 been attached. Her character has been attacked.

20 THE COURT: What is the relevance of this particular  
21 fact to that?

22 MR. REID: How she -- if she can account for  
23 inconsistencies, other than lying, which she's been  
24 accused.

25 THE COURT: Rephrase your question.

26 MR. REID: Okay.

27 Q. (By MR. REID) Why the inconsistencies?

28 A. I've had a long time to go over a lot of this

1 documentation. Um, it has slowly brought back a lot of  
2 memories of my time at Emerald Hills and just the people  
3 there. I hadn't thought about them in so long. And the  
4 interactions we had and -- it just brought back a lot of  
5 memories. And I would recall things that I didn't recall  
6 earlier.

7 Q. Are you a liar?

8 A. No. I'm trying to be as honest as I can.

9 MR. REID: Thank you. Those are all the questions I  
10 have.

11 THE COURT: Miss Clement, anything else?

12 MS. CLEMENT: Yeah.

13 FURTHER RECROSS-EXAMINATION

14 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
15 the Plaintiffs:

16 Q. How come you never replied to Kathleen Boice in any  
17 of these e-mails?

18 A. Because Nancy and I worked as a team. And if she  
19 replied to her, I didn't know why I would have to reply to  
20 her. The information was all there.

21 Q. How come when Nancy said Peggy would be getting back  
22 to you, you didn't get back to the family?

23 A. I don't know.

24 Q. How come all of these e-mails regarding  
25 Mrs. Kathleen Boice's communications between you and Peggy  
26 aren't in the chart?

27 A. I don't know.

28 Q. Did Mr. Reid show you the other ones that they

1 didn't put in the chart?

2 A. No. This is -- these are the ones I've seen.  
3 The ones I saw were the ones that you sent me after the  
4 second deposition. You sent me a chart.

5 Q. I sent you the entire chart, correct?

6 A. Okay.

7 Q. Correct?

8 A. I imagine it's the entire chart. There's no way I  
9 would know.

10 Q. Well, it said Exhibit 2 on it. And --

11 A. Okay.

12 Q. -- it's been represented to you that that's the  
13 entire chart that Emeritus produced.

14 A. Okay.

15 Q. Okay?

16 A. Uh-huh.

17 Q. Do you have any challenge of that?

18 A. No.

19 Q. Okay.

20 A. I just don't know.

21 Q. So my question is: How come the rest of the e-mails  
22 that the family was communicating to you and Nancy didn't  
23 end up in the chart?

24 A. I don't know. I don't recall them.

25 Q. During your deposition you were given the time to go  
26 through every page of the chart, true?

27 A. I don't --

28 Q. Because we can play that, watching you go through

1 every page, if you'd like.

2 A. If you say I did, then I probably did.

3 Q. The first day of your deposition you went through  
4 every page of the chart.

5 Do you remember that?

6 A. I remember going through a lot of documents with  
7 you.

8 Q. Well, it was just the chart that we went through,  
9 true?

10 A. Okay. Okay. Yes.

11 Q. And what did you do since the last day of your  
12 deposition and today to prepare you?

13 A. Looked over the documents that you sent me.

14 Q. Anything else?

15 A. Um --

16 MR. REID: Well, I'm going to object to the extent  
17 it invades upon the attorney-client privilege, your Honor.

18 THE COURT: All right. Other than meeting with your  
19 attorney.

20 THE WITNESS: That's all.

21 MS. CLEMENT: No further questions.

22 THE COURT: Mr. Reid?

23 FURTHER REDIRECT EXAMINATION

24 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
25 Defendant:

26 Q. The e-mails that we looked at, did Miss Clement send  
27 you any other e-mails, other than those?

28 A. I don't believe so.

1 Q. Do you -- it was proposed to you a minute ago that  
2 you never followed up with the Boice family.

3 Do you recall that, that testimony?

4 A. Yes. Yes.

5 Q. Do you remember one way or the other whether you had  
6 any personal communications with Mrs. Kathleen Boice?

7 A. I don't recall.

8 MR. REID: That's all. Thank you, your Honor.

9 MS. CLEMENT: Nothing.

10 THE COURT: Okay. Let me get all of your questions,  
11 from the jurors.

12 If you would pick them up, please.

13 MS. CLEMENT: Your Honor? May I just quickly step  
14 outside and tell the witness who has been waiting all day  
15 that she can go home?

16 (Miss Clement exits the courtroom.)

17 (Miss Clement reenters the courtroom.)

18 THE COURT: Ladies and gentlemen, got a lot of  
19 questions here.

20 (Laughter.)

21 THE COURT: It may be possible for me to ask all of  
22 these questions to this witness today, but that would  
23 clearly take us past the 4:30 hour.

24 Does anybody need to leave at 4:30 today for any  
25 reason?

26 Does anybody have any specific time constraints,  
27 like they have to be out of here by X?

28 Yes. What time?

1           ALTERNATE JUROR: 5:00.

2           THE COURT: Okay. We wouldn't be here beyond 5:00.  
3 But I'd like to see if we can make it through this, if  
4 possible.

5           Does anybody object?

6           Counsel approach.

7           (Whereupon an unreported bench conference was then  
8 had in open court between the Court and counsel.)

9           THE COURT: Go home.

10          (Laughter.)

11          THE COURT: I will see you tomorrow morning at 9:00  
12 o'clock. Leave your notebooks on the chairs. Remember the  
13 admonitions.

14          I need you back at 9:00 a.m. tomorrow morning.

15          THE WITNESS: Mm-hmm.

16          THE COURT: We're in recess.

17          (Evening recess.)

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1 appropriately to date on the admission of relevant  
2 evidence, on the issues that have been raised by both  
3 sides.

4 It is my belief that the Court has been attempting  
5 to move the case along as expeditiously as possible.  
6 However, both counsel have asked substantial amounts of  
7 questions. The jury has asked substantial amounts of  
8 questions. And I do not believe, respectfully, Mr. Reid,  
9 that I've allowed any detours or frolics outside the areas  
10 of relevance in the case.

11 Are we ready to bring in the jury at this time?

12 Could we, please, bring in Miss Stevenson.

13 Bring them in.

14 (Pause.)

15 THE WITNESS: Good morning.

16 THE COURT: Good morning.

17 You can be seated.

18 THE WITNESS: Okay.

19 **(The following proceedings were then had in open**  
20 **court, in the presence of the jury.)**

21 THE COURT ATTENDANT: At this time, come to order.

22 Department 45 is in session.

23 You may be seated.

24 THE COURT: Good morning, everyone.

25 JURORS IN UNISON: Good morning.

26 THE COURT: When we broke yesterday, I was going  
27 over your numerous questions with counsel, and we're going  
28 to start this morning by my asking those questions to our

1 witness.

2 And, Miss Stevenson, we allow our jurors to ask  
3 questions.

4 THE WITNESS: Okay.

5 THE COURT: And they do so either because they  
6 require clarification of testimony, or sometimes perhaps  
7 they have not fully comprehended the import of the  
8 testimony. So they ask a question that you may believe you  
9 have already answered --

10 THE WITNESS: Mm-hmm.

11 THE COURT: -- but please answer it again.

12 If you would turn and respond to the jury after I  
13 ask you the questions.

14 And, ladies and gentlemen, I'd also like to remind  
15 you that in -- I'm going to give you a couple of minutes  
16 after a witness has testified to review your notes.  
17 Because I believe many of these questions may have, in  
18 fact, been answered as we've gone through the testimony,  
19 and perhaps you didn't have a chance to go back and cross  
20 those out. Okay?

21 All right. One of the jurors wants to know that in  
22 a facility of 80 residents, how large was the housekeeping  
23 staff?

24 THE WITNESS: I believe there were two housekeepers.

25 THE COURT: How large was the dining staff?

26 THE WITNESS: Um, by "dining," are you -- I'm not  
27 sure if they mean servers or kitchen.

28 THE COURT: Why don't you explain the differences

1 and the numbers involved.

2 THE WITNESS: Okay. In the -- in the kitchen, we  
3 had a director of dining. And then there were about four  
4 part-time cooks who would come in and help as well. They  
5 typically would leave after their work was done, the  
6 kitchen was cleaned up, after a significant meal,  
7 breakfast, lunch, dinner. The dining director was always  
8 there.

9 As far as in the dining room, serving the residents,  
10 the resident -- while I was there, the resident assistants  
11 were the servers, as well as in memory care. The resident  
12 assistants who were with the residents there would serve  
13 them their meals as well.

14 THE COURT: Okay. Would you describe Emerald Hills  
15 to be like a hotel that also happened to have Alzheimer's  
16 residents?

17 THE WITNESS: Assisted living is a housing option --

18 THE COURT: No, no. Please listen very carefully to  
19 the question.

20 THE WITNESS: Oh, okay. Okay.

21 THE COURT: Would you describe Emerald Hills to be  
22 like a hotel that also happened to have Alzheimer's  
23 residents?

24 THE WITNESS: A hotel. Um, no. I would describe it  
25 as more like an apartment. I don't know if there's a fine  
26 difference.

27 THE COURT: Okay. Thank you.

28 This juror believes that she heard a prior witness,

1 or witnesses, say that when resident assistants attempted  
2 to call you, you would rarely be reachable.

3 Is this accurate?

4 THE WITNESS: No. We were in communication by  
5 radio. Hand-held radios.

6 THE COURT: Was your assessment to reject for  
7 admission any individual ever overruled?

8 THE WITNESS: To reject. There were questions  
9 regarding individuals who were coming in, and I may have  
10 needed more information and more clarification. But my  
11 rulings were -- if I made a decision someone was not fit to  
12 come in there, they did not come in.

13 THE COURT: One of the jurors noticed that on the  
14 skin evaluation for Mrs. Boice, it was blank. But they  
15 also believed that they saw that she was on some type of  
16 scalp medication.

17 Why would that not have been noted on the skin  
18 evaluation?

19 THE WITNESS: I don't know why it wasn't noted. I  
20 don't recall.

21 THE COURT: Another juror wants to know, on the  
22 move-in evaluations certain scores were given.

23 What did the total score mean?

24 THE WITNESS: The total score had to do with the  
25 level of assistance someone needed and that was reflected  
26 in their monthly rent. Someone who didn't need as much  
27 help did not have to pay as much as someone who needed more  
28 care.

1 THE COURT: Why weren't the scores always added up,  
2 even though there was a place for a total score?

3 THE WITNESS: I would need clarification if they --  
4 if it meant the Vigilant or the assessment, the  
5 pre-appraisal.

6 THE COURT: This is on the move-in evaluation.

7 THE WITNESS: Oh. On the move-in evaluation. That  
8 was just a score to, um -- that wasn't what set the -- the  
9 Vigilant is what set the points that had to do with  
10 financial ability to have enough staff to take care of  
11 certain needs.

12 On the appraisal, I don't know why they weren't  
13 added up. I'm trying to remember why we added them up. I  
14 think it was just to see how much -- if they had a higher  
15 score, it was going to mean more care.

16 THE COURT: What did you do when you found errors  
17 with the MARs?

18 THE WITNESS: Typically, we would discuss why there  
19 was an error, what was the error, who committed the error.  
20 There was a process that we went through.

21 THE COURT: Could someone be fired if an error was  
22 found?

23 THE WITNESS: In certain instances, yes.

24 THE COURT: Do you know of any med tech that was  
25 fired for an error?

26 THE WITNESS: No. Not while I was there.

27 THE COURT: The jurors were shown certain forms  
28 regarding medication given to Mrs. Boice. And on one of

1 the forms there were dates where it appeared that  
2 medication had not been given.

3 THE WITNESS: Yes.

4 THE COURT: When a day was missed giving a narcotic,  
5 should there not have been an extra pill that showed up?

6 THE WITNESS: Because they're counted, they may not  
7 have had a pill on that day. There may not have been a  
8 refill available. So there wouldn't be a missing pill.  
9 There just -- you had a refill bottle, and then they missed  
10 a day where they didn't have the -- any refills, so it  
11 didn't count off. But it was reflected in the dates.

12 THE COURT: With respect to Mrs. Boice, her doctor  
13 stated that she needed assistance to walk.

14 Were the caregivers instructed to stay with her  
15 while she was walking?

16 THE WITNESS: Yes, they were. When someone needs --  
17 I don't know of specifically Mrs. Boice. When someone  
18 needs --

19 THE COURT: Well, that -- please listen.

20 THE WITNESS: Okay.

21 THE COURT: This only refers to Mrs. Boice.

22 THE WITNESS: Okay.

23 THE COURT: If Mrs. Boice's doctor stated she needed  
24 assistance to walk, were the caregivers instructed to stay  
25 with her while she was walking?

26 THE WITNESS: That, I don't know.

27 THE COURT: If you were unsure of what a doctor  
28 wrote about a particular resident, what would you do?

1 THE WITNESS: Call the doctor's office.

2 THE COURT: Did Mrs. Boice become bedridden while at  
3 Emerald Hills?

4 THE WITNESS: I don't have my own recollection of  
5 that.

6 THE COURT: Okay. Were you ever told by your  
7 superiors to admit a person that you had, quote, "questions  
8 about"?

9 THE WITNESS: No.

10 THE COURT: What's the difference between a wellness  
11 director and a resident care director?

12 THE WITNESS: They're just titles. Some places call  
13 it a wellness director. Because in assisted living it does  
14 not have to be a nurse or -- they just have different names  
15 for it across different facilities.

16 THE COURT: So are they basically the same position,  
17 just called by two different names?

18 THE WITNESS: Correct.

19 THE COURT: Did any of the caregivers or med techs  
20 ever complain to you about lack of sufficient staffing?

21 THE WITNESS: Yes.

22 THE COURT: Please share with us the concerns that  
23 they shared with you.

24 THE WITNESS: Um, at times, staffing was tight.  
25 Because if someone called in, you know, everybody else had  
26 to pick up the slack. Um, tenant -- or residents moved in  
27 and moved out and so there was a fluctuation that we had to  
28 account for. Sometimes they would complain and, yet, I

1 would -- you know, we had busy times. Mornings were busy.  
2 Meal times were busy. Bed times were busy. But in  
3 between, they had enough time to go on breaks and lunches.  
4 No one ever missed a break or a lunch. They would often be  
5 seen chatting with residents. There was sufficient time  
6 and sufficient staff to do their job.

7 THE COURT: Did you ever participate in training new  
8 caregivers?

9 THE WITNESS: Yes, I did.

10 THE COURT: With respect to the training that you  
11 personally provided to the med techs, was that training  
12 on-the-job or classroom style?

13 THE WITNESS: It was both. They had to do a certain  
14 number of classroom style, where we went over a manual that  
15 defined terms and medications, how medications were to be  
16 received, how medications were to be accurately accounted  
17 for, all of the book learning that had to be done. And  
18 then it was a hands-on process of, you know, working with  
19 another med tech, or me, in the med room, showing them how  
20 to fill out the medication cups that we used to give to  
21 the -- to the residents there. So --

22 THE COURT: What is your understanding of who is the  
23 person qualified to perform a resident evaluation?

24 THE WITNESS: The resident evaluation was a -- it  
25 was more of an appraisal. And so realistically, I could do  
26 it. The executive director could do it. Memory care  
27 director could do it. One of our supervisors who wasn't  
28 always in the building, but if they were there, they



1 certainly could do that.

2 THE COURT: Was there a policy in place at Emeritus  
3 as to who could fill out a resident evaluation at the time  
4 Mrs. Boice was there?

5 THE WITNESS: I don't recall if there was a policy.  
6 I just don't recall it.

7 THE COURT: This juror believes that you stated in  
8 your testimony that many residents were not bedridden.

9 Does that mean that there were a few residents that  
10 were bedridden?

11 THE WITNESS: There's a difference between bedridden  
12 and --

13 THE COURT: That's not the question. Please listen.

14 THE WITNESS: Oh, okay.

15 THE COURT: This juror believes that you stated in  
16 your testimony that many residents were not bedridden.

17 Does that mean that there were a few residents that  
18 were bedridden?

19 THE WITNESS: No. There weren't.

20 If I can speak to non-ambulatory?

21 THE COURT: Not the question.

22 THE WITNESS: Okay.

23 THE COURT: This juror recalls that you stated in  
24 your testimony that you want to have heard what happened  
25 during your time at Emerald Hills. They note that you also  
26 indicated that you don't remember what happened back then.

27 So this juror wants to know, what is it that you  
28 want to have heard if you don't have a clear recollection

1 of what happened?

2 THE WITNESS: I want the jury to know -- this --  
3 Mrs. Boice was there when I was there; although, I don't  
4 recall her. I wish I could. But I'm not going to tell you  
5 I do if I don't. That was the time period that I was  
6 there. So you should hear from me about what was occurring  
7 there during that time period. I just want to let you know  
8 what I know.

9 THE COURT: All right. Did you personally ever  
10 complain about staffing levels to your supervisors?

11 THE WITNESS: Yes.

12 THE COURT: If you were offered another job with  
13 Emeritus at this time, would you take it?

14 THE WITNESS: No.

15 THE COURT: If not, why?

16 THE WITNESS: Because I'm a hospice nurse. That's  
17 where my heart is.

18 THE COURT: Were you aware that caregivers and  
19 med techs were administering insulin and medication?

20 And this jury has heard a number of explanations  
21 about the difference between "assisting" and  
22 "administering."

23 THE WITNESS: Okay.

24 THE COURT: So I believe they're using that term as  
25 in administering insulation -- insulin and medication.

26 THE WITNESS: While I was there?

27 THE COURT: Were you aware that caregivers and  
28 med techs were administering insulin and medication?

1 THE WITNESS: Prior to my coming on board, yes.

2 MS. CLEMENT: Your Honor, I think the answer is  
3 nonresponsive.

4 THE COURT: You may follow up on it if you need to.

5 MS. CLEMENT: Okay.

6 THE COURT: Yesterday you were asked a number of  
7 questions off of the move-in assessment for Mrs. Boice.

8 Do you remember actually filling out that  
9 assessment?

10 THE WITNESS: No, I don't.

11 THE COURT: Did you observe -- did you observe any  
12 staff members performing medical procedures during your  
13 tenure who should not have been performing medical  
14 procedures?

15 THE WITNESS: No, I did not.

16 THE COURT: Was it common practice to put, quote,  
17 "requires PRN medication," close quote, in a resident's  
18 file even if they did not have doctor's orders for PRN  
19 medications?

20 THE WITNESS: No. That would be inappropriate.

21 THE COURT: What would happen if a refill for a  
22 medication for a resident did not arrive in a timely  
23 manner?

24 THE WITNESS: We -- I can only speak generally. We  
25 would call the family, call the doctor, call the pharmacy,  
26 find out what the delay was.

27 THE COURT: What staff members during your tenure at  
28 Emeritus Hills had access to Vigilant? (Verbatim.)

1           THE WITNESS: The executive director, me, memory  
2           care director. Those are the only ones that I know of,  
3           that I can recall.

4           THE COURT: Who specifically could enter information  
5           into Vigilant during your tenure?

6           THE WITNESS: The same people. Executive director,  
7           me, or the memory care director.

8           THE COURT: Did you ask Emeritus to represent you  
9           during this trial?

10          THE WITNESS: I asked their attorneys, yes.

11          THE COURT: Did you have any input into the budget  
12          for Emeritus Hills? (Verbatim.)

13          THE WITNESS: No.

14          THE COURT: Were you -- did you ever ask for  
15          something that was not in the budget?

16          THE WITNESS: Yes.

17          THE COURT: What was the response?

18          THE WITNESS: That I would have to show cause to go  
19          above a budgeted number.

20          THE COURT: Did you ever get the items you asked  
21          for?

22          THE WITNESS: I don't recall specifically.

23          THE COURT: Do you know how many other residents had  
24          pressure ulcers at the same time that Joan Boice had  
25          pressure ulcers?

26          THE WITNESS: I don't recall specifically. I don't  
27          want to guess.

28          THE COURT: Did the Roseville facility have a nurse

1 only two days a week when you went there?

2 THE WITNESS: Yes.

3 THE COURT: Do you know how many sundowners were in  
4 the memory unit when you were at Emerald Hills?

5 THE WITNESS: Not specifically, but we did have some  
6 people who had sundowners.

7 THE COURT: Do you know how many residents typically  
8 stayed up all night?

9 THE WITNESS: I do recall that there was one in the  
10 memory care that typically stayed up all night.

11 THE COURT: This juror would like you to describe  
12 what nursing duties you engaged in when you were at  
13 Emerald Hills.

14 THE WITNESS: Looking over medications. Looking  
15 over doctors' orders. Um, I don't think I did any others.

16 THE COURT: Did you continue to do transcription  
17 work while working at Emerald Hills?

18 THE WITNESS: I did.

19 THE COURT: This jury has heard Emerald Hills  
20 described as a "non-medical model."

21 Why would a non-medical model require a nurse?

22 THE WITNESS: They don't require a nurse, and many  
23 of these facilities do not have nurses. Emeritus just  
24 chose to have a licensed person overseeing some of the  
25 documentation and medication.

26 THE COURT: This juror believes that she heard you  
27 say you did not want to endanger your license.

28 She or he wants to know, how many times did you feel

1 that way while you were at Emerald Hills?

2 THE WITNESS: Probably just that once.

3 THE COURT: How often would a resident like  
4 Mrs. Boice have her weight checked?

5 THE WITNESS: A resident like Mrs. Boice was  
6 supposed to have their weight checked once a month.

7 THE COURT: This juror wants to know that with the  
8 number of bedsores that Mrs. Boice was exhibiting,  
9 shouldn't there have been a care alert in her file  
10 every day that she was at Emerald Hills?

11 THE WITNESS: If we're aware of something, I don't  
12 know that they need to put a care alert in every day.

13 THE COURT: As a registered nurse, on how many  
14 occasions did you personally attend to bedsores for  
15 residents at Emerald Hills?

16 THE WITNESS: I did not.

17 THE COURT: There was some prior testimony by  
18 another witness, again, referring back to a date or time  
19 when Joan Boice did not receive medication.

20 Do you recall whether or not you ever noticed this?

21 THE WITNESS: I don't recall.

22 THE COURT: Mrs. Boice's controlled drug record  
23 indicates every medication was dispensed at 8:00 p.m.

24 Does this seem odd to you, that every dose was  
25 administered exactly at 8:00 p.m.?

26 THE WITNESS: Um, it was a nighttime dose, so it was  
27 done at 8:00. However, in -- common practice for giving  
28 medication is that you have an hour prior and an hour after

1 a medication is to be given. Because there's no way  
2 everyone can get a medication at the exact same time. But  
3 that's what they put on the scheduling. However, you  
4 always have an hour grace one way or the other.

5 THE COURT: This juror wants to know if you ever  
6 initialed any of the MARs reports that you reviewed.

7 THE WITNESS: I did not initial the MARs that I  
8 reviewed.

9 THE COURT: This juror reflects that you told them  
10 yesterday that you had always wanted to be a nurse.

11 THE WITNESS: Yes, since I was little.

12 THE COURT: Can you explain why early in your career  
13 it appeared to this juror that you did not have direct  
14 one-to-one patient work.

15 THE WITNESS: I spent a year doing hospital work  
16 and -- at night. That was a little difficult on my family,  
17 so I stayed home and did another kind of medical work,  
18 which was the transcription. After that, I worked my way  
19 back into nursing in a way that I felt was comfortable for  
20 me as a professional. So I worked from, you know, the  
21 day-care center -- the adult day-care center and worked my  
22 way in -- back into nursing to where I felt comfortable.  
23 But I was very comfortable with my skills.

24 THE COURT: Do you prefer paperwork over working  
25 directly with patients?

26 THE WITNESS: I prefer working with patients.

27 THE COURT: In earlier testimony the juror believes  
28 that they heard that the 602 physician's report needs to be

1 completed 30 days prior to admittance to the facility for  
2 safety reasons.

3 THE WITNESS: Mm-hmm.

4 THE COURT: They believe that the 602 performed by  
5 The Palms facility was dated June 3rd, 2008, and that  
6 Mrs. Boice was -- appraisal was completed and signed  
7 September 12th, 2008.

8 THE WITNESS: Mm-hmm.

9 THE COURT: So the question is, assuming all of that  
10 is correct, do you believe that changes in a patient's  
11 condition could occur within a three-month period that  
12 should be checked out prior to admission to a facility like  
13 Emerald Hills?

14 THE WITNESS: They can change. It was Emeritus'  
15 policy that it be within 30 days, but that was not the  
16 Title 22 policy. Um -- and sometimes when -- I have to  
17 speak generally. I don't want to go there if you don't  
18 want me to.

19 THE COURT: I just want you to answer the question.

20 THE WITNESS: Okay.

21 THE COURT: They'll follow up if they have anything  
22 additional.

23 THE WITNESS: Okay.

24 THE COURT: Would you accept a 602 from another  
25 facility that was four months old?

26 THE WITNESS: I don't know.

27 THE COURT: Or five or six months old?

28 THE WITNESS: That would be within Title 22, but I



1 don't know if Emeritus would have accepted it.

2 THE COURT: Did you personally ever administer  
3 insulin to any of the residents?

4 THE WITNESS: No.

5 THE COURT: Did you ever train any of the med techs  
6 on how to administer insulin?

7 THE WITNESS: No.

8 THE COURT: Have you ever heard the term "heads in  
9 the beds"?

10 THE WITNESS: No.

11 THE COURT: This juror believes that they heard you  
12 say that it was not your responsibility to take Mrs. Boice  
13 to get her foot x-rayed. Assuming that's correct, whose  
14 responsibility was it to follow up on the doctor's order to  
15 get her foot x-rayed?

16 THE WITNESS: It would be the family's  
17 responsibility. We did not transport patients -- or  
18 residents to doctors' appointments.

19 THE COURT: You said you supervised about 30 people.  
20 Were the 30 people either med techs or resident  
21 assistants?

22 THE WITNESS: Yes.

23 THE COURT: Did you ever have to work a double  
24 shift?

25 THE WITNESS: I was salaried. There was no double  
26 shift. But, no. In a sense of a double shift, no.

27 THE COURT: Did Emeritus' attorneys represent you at  
28 the deposition?

1 THE WITNESS: No, they did not.

2 THE COURT: Would you say that most of your training  
3 was on-the-job training while at Emerald Hills?

4 THE WITNESS: For a resident care director at an  
5 assisted living, yes, it was.

6 THE COURT: Are you worried that any information  
7 that might come out from this trial could lead to you  
8 losing your RN license?

9 THE WITNESS: No. I'm not worried about it.

10 THE COURT: Were you considered the direct  
11 supervisor to the caregivers and med techs?

12 THE WITNESS: Yes, I was.

13 THE COURT: How long were you at Emerald Hills  
14 before you read Title 22?

15 THE WITNESS: I know I read it within the first week  
16 or two.

17 THE COURT: If you were employed prior to entering  
18 the nursing field, what did you do?

19 THE WITNESS: My husband and I had our own business  
20 at one time doing ergonomics in the early nineties, when  
21 that was a new field. And prior to that, I was in property  
22 management as a property manager for large office  
23 buildings. Before that, I was in insurance.

24 THE COURT: This juror is referencing, I think, in  
25 Exhibit 2, page 20 -- if somebody could check on this.  
26 This would be the resident evaluation form.

27 Can I get that, please.

28 MR. REID: Page 20 is part of the 602.

1 THE COURT: It's part of the 602. Okay.

2 MS. CLEMENT: Do you want to put it up on the  
3 screen, your Honor?

4 THE COURT: No.

5 MS. CLEMENT: Okay.

6 THE COURT: Let me just look at it.

7 (Pause.)

8 THE COURT: Okay. Does somebody have that, that  
9 they can put it up, please.

10 MS. CLEMENT: Yeah. Can we get the...

11 THE COURT: Okay. On the very top, the first  
12 section, "Primary Diagnosis."

13 THE WITNESS: Whoops.

14 THE COURT: There's a reference that says "needs to  
15 be administered meds" in the lower right-hand corner.

16 In your opinion, did the doctor mean that someone  
17 needed to give her her medication, or simply help her take  
18 her medication?

19 THE WITNESS: I don't want to say what the doctor  
20 meant. We were a facility that could only assist in the  
21 medications.

22 THE COURT: Could you go to page 22, MC 22, which is  
23 number 16 in this same document, please.

24 And just highlight the 16 part, if you can, please.

25 This juror is focusing on the answers to the  
26 questions in 16, "No, the person is not able to administer  
27 their own prescription medications or injections," so on  
28 and so forth.

1 THE WITNESS: Mm-hmm.

2 THE COURT: This juror wants to know, how could  
3 Mrs. Boice qualify for assisted living if she needed  
4 someone to give her or administer all of her medication  
5 needs?

6 THE WITNESS: That's a tough one. We did not  
7 administer medications. We assisted them with their  
8 medications. Could they take the medications and take them  
9 themselves was what we had to know. And she could  
10 physically give herself her own medications.

11 THE COURT: Can I have the lights, please.

12 We can take that down.

13 In your opinion, should Mrs. Boice's family have put  
14 her in a facility like Emerald Hills?

15 THE WITNESS: When she came to us, according to the  
16 documentation that I have seen, she was appropriate to be  
17 in our Memory Care Unit.

18 THE COURT: As part of your compensation at  
19 Emerald Hills, did you receive any type of bonus based on  
20 the number of beds filled?

21 THE WITNESS: In -- after my deposition, I was asked  
22 that question. Um, I did not recall any kind of bonus  
23 structure. I was told that there was a bonus structure. I  
24 don't recall ever getting a bonus structure, nor cared if I  
25 got one for something like that.

26 THE COURT: Does any of Mrs. Boice's 602 information  
27 that the jury was shown in Exhibit 2 conflict with any of  
28 the Emerald Hills intake form that you believe you may have

1 filled out on the Vigilant?

2 THE WITNESS: I'd have to see them again to see if  
3 they conflict. I didn't look at them closely enough to  
4 compare them. I can't tell you that it conflicts right  
5 now.

6 THE COURT: This juror recalls your discussion  
7 yesterday regarding Miss Clement's talking to you after the  
8 deposition or when you were off the record on -- from the  
9 deposition.

10 Do you believe that Miss Clement pressured you in  
11 any way to answering questions when you went off the  
12 record?

13 THE WITNESS: When we were having an off-the-record  
14 conversation when the stenographer and videographer were  
15 gone, I didn't feel pressured to have a conversation. I  
16 was engaged in conversation. And we talked about many  
17 things. Her dog. My dog. We talked about a lot of  
18 different things. But I did not feel pressured. No.

19 THE COURT: Did you believe that Miss Clement tried  
20 to taint your answers in any way as a result of that  
21 conversation?

22 THE WITNESS: I believe that she took what I shared  
23 as a personal opinion on the second deposition and started  
24 right off with that conversation, and I felt very betrayed.  
25 And, yes, I felt put in a box for my own personal opinion  
26 that did not agree with the current law. I think we all  
27 have disagreements with the law, or how things should be.

28 THE COURT: Is it normal -- I think probably the

1 legal -- is it customary to place all e-mails from the  
2 party's family, or to and from, about a resident, in a  
3 patient's chart?

4 THE WITNESS: That would be ideal. I don't know why  
5 it wasn't done. It was on the computer. I guess we  
6 thought we could get to it whenever we wanted to. Ideally,  
7 yes, it should have been. It was not customary at that  
8 time.

9 THE COURT: Miss Clement, do you wish to follow up?

10 MS. CLEMENT: Yes, your Honor.

11 FURTHER RECROSS-EXAMINATION

12 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
13 the Plaintiffs:

14 Q. Your Honor, I'd like to start with showing a video  
15 of Miss Stevenson, the second deposition, page 230, lines  
16 24 through 234, line 7.

17 And this is all with response to the jurors'  
18 questions.

19 MR. REID: Where did you want to end? I'm sorry. I  
20 think --

21 MS. CLEMENT: 230, 24, to 234, line 7. Okay?

22 And then the second one is 235, line 4 through 12.

23 And next is 236, 9 through 21.

24 And 237, 12 through 238, 11.

25 MR. REID: If I may have one moment, your Honor.  
26 The first section is several pages long.

27 THE COURT: Go ahead.

28 (Pause.)

1 MR. REID: No objection to the first segment, your  
2 Honor.

3 THE COURT: I'm sorry, sir?

4 MR. REID: No objection to the first segment.

5 THE COURT: To the first segment?

6 MR. REID: Right.

7 THE COURT: Are you still reviewing?

8 MR. REID: No, I -- the first section she wants to  
9 show, I have no objection to. And I'll look at the other  
10 ones while she's displaying that first one.

11 MS. CLEMENT: I'd rather -- could we just like make  
12 a decision and just go forward?

13 THE COURT: Go ahead and review the rest so we can  
14 do them all at one time, if appropriate.

15 MR. REID: Okay.

16 MS. CLEMENT: Thank you, Judge.

17 (Pause.)

18 MR. REID: No objection, your Honor.

19 THE COURT: All right. Thank you.

20 MS. CLEMENT: Thank you, your Honor.

21 Michelle, do you need me to read out the page and  
22 lines for you?

23 THE COURT REPORTER: (Shakes head.)

24 MS. CLEMENT: Okay.

25 **(The following video excerpt was then played in open**  
26 **court):**

27 Q. I want to start off --

28 **(Video stopped.)**

1           **(The following video excerpt was then played in open**  
2           **court) :**

3           Q.       I want to start off this morning with where we ended  
4           off last time, and in particular with the conversation you  
5           and I had after the deposition. We had to end early  
6           because Mr. Prout had to leave, and you and I had a  
7           discussion on the topics that we were discussing right at  
8           the end of the deposition, which was related to your  
9           complaints and concerns about your job, and the job of the  
10          Memory Care Unit director, and some of the other staff.

11          So starting with that, I'd like to talk to you about  
12          the concerns that you had as an RN and the resident care  
13          coordinator at Emeritus Emerald Hills with the med techs  
14          passing psychotropic drugs on a PRN basis.

15          A.       My concern as a licensed individual was that the  
16          State was allowing assisted living centers to have  
17          unlicensed individuals who were trained for a minimal  
18          amount of time assisting patients with medications. Um,  
19          uniquely, in the Memory Care Unit because the patients  
20          there I did not believe were able to make -- to have made  
21          consent to take medications. And therefore, it was a fuzzy  
22          crossover from assisting to administering. And that was  
23          one of the reasons that I left Emeritus and assisted living  
24          in general, because of that particular policy.

25          Q.       So was it your experience at Emeritus Emerald Hills  
26          in the Memory Care Unit that the med techs were actually  
27          administering the medication as opposed to assisting the  
28          resident with taking the medication as a result of the



1 dementia that those residents suffered from?

2 A. It would depend on the particular resident in  
3 question. Some had more capacity than others.

4 Q. Would it be true that while you worked at Emeritus  
5 Emerald Hills that the residents in the Memory Care Unit,  
6 the majority of those residents suffered from dementia?

7 A. That, I do not have an independent recollection of.

8 Q. Okay. Was it your understanding that the  
9 residents -- one of the qualifications for being in the  
10 Memory Care Unit was to have some form of dementia?

11 A. Yes.

12 Q. And was it your -- is it your recollection that the  
13 residents in the Memory Care Unit had varying degrees of  
14 dementia?

15 A. Yes.

16 Q. Did you have any other concerns about the med techs  
17 that were unlicensed staff passing out psychotropic drugs  
18 on a PRN basis, or as-needed basis?

19 A. As a licensed individual, I did have concerns  
20 regarding that.

21 Q. And what were your concerns? Would you explain that  
22 to us.

23 A. That unlicensed staff would not understand the  
24 varying degrees of need for an as-needed medication, even  
25 though they were written out specifically as to what signs  
26 and symptoms to look for.

27 Q. In your experience as a licensed nurse, an RN, the  
28 delivery or administration of psychotropic drugs on an

1 as-needed basis requires some assessment of the patient to  
2 see, in fact, if they need the -- this particular drug,  
3 correct?

4 A. In general, that's true.

5 Q. And in your experience in working as the resident  
6 care coordinator at Emeritus Emerald Hills, did you feel  
7 that the med techs who were employed there, that you were  
8 supervising, had the education and training to do a  
9 resident assessment?

10 A. Um, I'm not sure. There were many, and they're all  
11 individuals.

12 **(Video stopped.)**

13 MS. CLEMENT: Lights, please.

14 **(The following video excerpt was then played in open**  
15 **court) .**

16 Q. Do you have concerns about the med techs passing out  
17 pain medication on a PRN, or as-needed basis?

18 A. Yes, I had problems in general with med techs  
19 assisting with medications.

20 Q. Can you explain for us in more detail what -- the  
21 problems you had with the med techs assisting or  
22 administering medications?

23 A. They were not licensed.

24 Q. When we ended last time, you were talking about  
25 feeling overwhelmed by your job duties and lack of training  
26 that you had personally to perform your job.

27 Can you expound on that?

28 A. Um, in general, I -- I just felt that it -- it was a

1 situation where there were untrained, unlicensed  
2 individuals involved in medications. And that as a  
3 licensed individual, I was concerned about maintaining my  
4 own license and was not comfortable with continuing there.

5 Q. Were you concerned that you would be putting your  
6 own license in jeopardy by staying there?

7 A. Yes.

8 Q. Did you just work -- just under a year, right?

9 A. Under a year.

10 Q. Yes. Just under a year.

11 Was it your opinion that a licensed nurse such as  
12 yourself should have been the responsible person for  
13 administering the medications to the residents?

14 A. I have to say that that's irrelevant for me because  
15 that wasn't the way that the business was set up.

16 Q. But at the time that you worked there, was that your  
17 opinion, that a licensed nurse should have been  
18 administering the medications to the Memory Care Unit  
19 residents?

20 A. It was my opinion that what was in place was unsafe.

21 Q. And why did you think it was unsafe?

22 A. Because unlicensed individuals were allowed to  
23 assist with medications.

24 Q. Did you also feel that it was unsafe that unlicensed  
25 individuals were doing resident assessments and reporting  
26 their assessments to the residents' physicians?

27 A. I do not have any independent recollection of that.  
28 It was three years ago.

1 Q. Okay.

2 **(Video stopped.)**

3 (Pause.)

4 THE COURT: Miss Clement?

5 MS. CLEMENT: Yes. Just a second, Judge. Sorry.

6 (Pause.)

7 THE COURT: Any further questions?

8 MS. CLEMENT: One. Sorry.

9 Q. (By MS. CLEMENT) Miss Stevenson, as the only nurse  
10 in the facility, why weren't you doing wound care for  
11 Mrs. Boice when the home health care nurses weren't there?

12 A. Because I couldn't be there all the time to do her  
13 wound care. I might have been out of the building, on  
14 vacation. It was just something that was set up with her  
15 doctor. I didn't work for her doctor. And her doctor was  
16 the only one who could order it.

17 THE COURT: Mr. Reid, any follow-up?

18 MR. REID: Yes. A few. Thank you, your Honor.

19 FURTHER REDIRECT EXAMINATION

20 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
21 Defendant:

22 Q. Who -- following up on that last question, who  
23 provided the wound care for Mrs. Boice, based on your  
24 review of the records?

25 A. Home health, Kaiser Home Health.

26 Q. Okay. And based on your review of the records, can  
27 you describe, if you recall, what that treatment involved  
28 for Mrs. Boice's wounds.

1 MS. CLEMENT: Lacks foundation.

2 THE COURT: Sustained.

3 Q. (By MR. REID) When you reviewed the records, did  
4 you make note of the frequency of the care or what kind of  
5 care was being delivered for Mrs. Boice's wounds?

6 MS. CLEMENT: I'm sorry, your Honor. I'm objecting.  
7 It's vague. I don't know what records he's referring to.  
8 I thought she'd only reviewed the chart.

9 THE COURT: Can we get a little more specific,  
10 please.

11 Q. (By MR. REID) You were provided with records by  
12 Miss Clement. And you reviewed records, correct?

13 A. Yes.

14 Q. Okay. What records have you looked at?

15 A. I've reviewed, um, the chart, and I have also  
16 reviewed Kaiser's records.

17 Q. Okay. And when you reviewed those records, did you  
18 get an understanding of the type of care that was ordered  
19 by Dr. Awan to be delivered to Mrs. Boice for her wounds?

20 MS. CLEMENT: Your Honor, wouldn't this be  
21 attorney-client privilege?

22 THE COURT: If he's asking the question, I'm  
23 assuming it's not.

24 She can answer.

25 THE WITNESS: Her care required wound care  
26 cleansing, some medication, Kerlix gauze, Kerlix to be  
27 added to it. We didn't carry those kind of supplies, nor  
28 was it common for us to get them. So there wouldn't be a

1 way for me to do her wound care.

2 Q. Do you have a recollection, having looked at the  
3 records, how frequently the treatments or care was  
4 prescribed to be provided to Mrs. Boice?

5 A. I don't recall.

6 Q. In this process, who makes the determination of how  
7 frequently the treatments are done?

8 A. Her doctor.

9 Q. Okay. And then who makes the determination how  
10 frequently the home health nurses come in to -- to follow  
11 orders?

12 MS. CLEMENT: Lacks foundation.

13 THE COURT: This is her general understanding?

14 MR. REID: Correct, your Honor.

15 THE COURT: Could you rephrase, please.

16 Q. (By MR. REID) Based on your general understanding  
17 as the resident care director at Emerald Hills, and based  
18 on your experience, do you have an understanding of who  
19 made the orders with regard to how frequently the home  
20 health nurses would come in?

21 MS. CLEMENT: I'll object to the question. It still  
22 lacks foundation as to Joan Boice.

23 THE COURT: Overruled.

24 THE WITNESS: Her doctor.

25 Q. (By MR. REID) And having served as a resident care  
26 director at Emerald Hills, and having experience with home  
27 health, can you describe whether there were different  
28 frequencies in which treatments were ordered from the

1 doctor?

2 MS. CLEMENT: Leading.

3 THE COURT: Are we talking about Mrs. Boice now, or  
4 are we talking about generally, any and all residents?

5 MR. REID: Generally, in her experience.

6 THE COURT: She can answer.

7 THE WITNESS: Can I get the question again?

8 THE COURT: Do you want it read back?

9 MR. REID: Please. I'm sorry. Yes.

10 THE WITNESS: Please.

11 THE COURT: All right. Michelle.

12 (Record read.)

13 THE WITNESS: Yes, there could be different  
14 frequencies.

15 Q. (By MR. REID) What was the range of frequencies in  
16 general that you recall that the nurses were ordered to  
17 come in and provide care?

18 MS. CLEMENT: Relevance.

19 THE COURT: Are we getting into other people's cases  
20 individually?

21 MR. REID: Just her -- her experience and what she  
22 observed and -- as the resident care director, your Honor.

23 THE COURT: And the relevance to Mrs. Boice would be  
24 what?

25 MR. REID: Well, whether Miss Stevenson could direct  
26 how often the nurses would come in to provide the care.

27 THE COURT: Then just ask her that question.

28 MR. REID: Okay.

1 Q. (By MR. REID) Did you have any ability to direct  
2 the home health nurses as to how frequently they should  
3 come in and provide care for Mrs. Boice?

4 A. No, I did not.

5 Q. Now, we saw some segments from your deposition a few  
6 minutes ago. I want to -- I want to ask you some questions  
7 about that.

8 There was a reference in there about your concern  
9 for your license.

10 Do you have that in mind?

11 A. I do.

12 Q. Can you tell the jury what that means. What were  
13 you referring to?

14 A. I was referring to, um, what was legal to do and  
15 what I was comfortable with. I think someone who has a  
16 license wants to protect it and doesn't like other people  
17 coming in on their territory. It was what I was trained to  
18 do, so I was more comfortable doing something like that.  
19 Although it was legal, it may not have been something that  
20 I agreed with.

21 Q. And have you changed that opinion?

22 A. I don't think so.

23 Q. Are there models where medications are delivered by  
24 licensed individuals?

25 MS. CLEMENT: Exceeds the scope.

26 THE COURT: Sustained.

27 Q. (By MR. REID) When you say that you were not  
28 comfortable with this model, were -- were you aware of any



1 other models that had licensed individuals that were the  
2 ones that provide medications to the patients?

3 MS. CLEMENT: Leading. And it misstates what she  
4 stated.

5 THE COURT: Sustained.

6 Q. (By MR. REID) When you were the resident care  
7 director at Emerald Hills, you've mentioned and you were  
8 asked about a social model.

9 Do you have that in mind?

10 A. Yes, I do.

11 Q. Okay. What's the difference between a social model  
12 and some other model? What other models are there?

13 MS. CLEMENT: Exceeds the scope, your Honor.

14 THE COURT: Sustained.

15 Q. (By MR. REID) You answered a question -- a jury  
16 question earlier concerning food being served to the  
17 residents.

18 Do you have that in mind?

19 A. I do.

20 Q. Okay. Were there -- were there any -- were there  
21 any aprons available for the serving staff when they were  
22 serving food?

23 A. Yes, there were.

24 Q. When you were the resident care director, did you --  
25 what did you observe in terms of the attire that the staff  
26 were wearing and serving the food?

27 MS. CLEMENT: Exceeds the scope of the questions,  
28 your Honor.

1 THE COURT: Sustained.

2 Q. (By MR. REID) One of the questions that you were  
3 asked was your ability to be reached by other staff. And  
4 you said -- you mentioned that you had a radio and you were  
5 available.

6 Do you recall that?

7 A. Yes, I do.

8 Q. Okay. I think perhaps the jury -- the juror was  
9 asking about your availability after hours. Okay?

10 So the question would be: After hours, were you --  
11 what was your availability for the staff if they had  
12 questions?

13 MS. CLEMENT: Exceeds the scope of the questions,  
14 your Honor. It wasn't the question asked.

15 THE COURT: Overruled.

16 THE WITNESS: One of my job duties was to be  
17 available 24/7. And I had a company phone and I could be  
18 reached night or day, every day of the week.

19 Q. (By MR. REID) Did you ever hear complaints from  
20 your staff that they tried to get ahold of you and they  
21 couldn't reach you?

22 A. I never did. No.

23 Q. Was there ever -- what, if any, communications did  
24 you have with your staff about your availability after  
25 hours?

26 A. I was always available and they could call me at any  
27 time. I received a lot of calls at night, if they had a  
28 question, over the weekend.

1 Q. That -- you received a lot of calls.

2 Was there any particular time in your tenure at  
3 Emerald Hills that you remember getting more or less calls?

4 A. Not really. No.

5 Q. We went through the narcotic medication count.  
6 Do you have that in mind?

7 A. Yes, I do.

8 Q. Okay. And you were asked some questions about that.  
9 Now, the form itself says, *Narcotic medication*  
10 *count.*

11 A. Correct.

12 Q. Okay.

13 A. Controlled drug.

14 Q. Controlled drug.

15 A. Yes.

16 Q. Okay. Was a similar count done for other types of  
17 medications that -- that were not narcotic or controlled  
18 substances?

19 MS. CLEMENT: Exceeds the scope, your Honor.

20 THE COURT: The questions that I recall, Mr. Reid,  
21 to the jury related to narcotic drugs only.

22 Sustained.

23 Q. (By MR. REID) You were asked a question about the  
24 second -- the second page of the 602. I wanted to ask a  
25 follow-up question about that.

26 MR. REID: Your Honor, would it be okay to put page  
27 20 of Exhibit 2 up?

28 THE COURT: Yes.

1           MR. REID: Would you highlight section seven and  
2 eight, please, Miss Ford.

3           Q.       (By MR. REID) Okay. Looking at the section that  
4 was brought to your attention by the jurors, and then  
5 comparing that to the notation down below (indicating) in  
6 section eight. The question asked of you was about whether  
7 Ms. Boice needed to be administered her meds.

8                   Do you have that in mind?

9           A.       I do.

10          Q.       Okay. Now, in the -- in the second box, when you  
11 reviewed this -- or when you review this form, what is your  
12 understanding of the doctor's direction as to the level of  
13 assistance that Mrs. Boice required with her medications?

14                 MS. CLEMENT: Objection; it calls for speculation  
15 and lacks foundation.

16                 THE COURT: Well, the question calls for her  
17 understanding, not, in fact, what the doctor meant. And  
18 limited only to what her understanding was, she may answer.

19                 THE WITNESS: "Needs to be given her meds" could be  
20 handed her meds. Yeah.

21          Q.       (By MR. REID) Okay. All right. And -- I know you  
22 don't remember Mrs. Boice or doing this assessment.

23                   Right?

24          A.       Correct.

25          Q.       Okay. But you testified in response to some  
26 questions that -- you said she could physically take her  
27 medications.

28                   Do you remember saying that?

1 A. I do.

2 Q. Okay. How can you -- how can you say that she could  
3 physically take her medications if you don't recall  
4 Mrs. Boice?

5 A. It was a general answer. They needed to be able to  
6 put the medication in their own mouth.

7 Q. Okay. And -- and in -- as a resident care director  
8 admitting residents to Emerald Hills, was that one of the  
9 factors you considered in whether they could move in or  
10 not?

11 A. Yes.

12 Q. And so with regard to not Mrs. Boice because you  
13 don't remember her, but with regard to admission of a  
14 resident, would you have made a determination as to their  
15 level of ability to physically consume their own  
16 medication?

17 MS. CLEMENT: Objection, your Honor. Exceeds the  
18 scope. It's also leading.

19 MR. REID: I'm following up on her answer, your  
20 Honor.

21 THE COURT: It doesn't -- the question is not with  
22 regard to Mrs. Boice --

23 MR. REID: Correct.

24 THE COURT: -- according to your question. So are  
25 you asking -- I'm not sure what the question is asking.

26 Could you rephrase, please.

27 MR. REID: Okay. I will. Mm-hmm.

28 Q. (By MR. REID) You allowed Mrs. Boice to move into

1 Emerald Hills based on the documentation?

2 A. Yes.

3 Q. Okay. So because of that, are you -- can you tell  
4 the jury what determination you made concerning her ability  
5 to consume her own medications?

6 A. She would have had to have done that. Another place  
7 I see that is her ability to feed herself. So she would be  
8 able to take her medications.

9 Q. Now, you were asked a question about if you were --  
10 MR. REID: Thank you very much.

11 THE COURT ATTENDANT: Mm-hmm.

12 Q. (By MR. REID) -- if you were offered a job to work  
13 for Emeritus, whether you would take it. And you said,  
14 "No."

15 A. Mm-hmm.

16 Q. You said that because you like hospice?

17 A. Yes.

18 Q. Okay. Can you further elaborate as to whether on  
19 this notion that you wouldn't go back and work for  
20 hospice (sic) --

21 A. Emerald Hills.

22 Q. -- tell the jury, what, if any -- if there's a  
23 restriction you wouldn't do it because of how -- something  
24 related to Emeritus itself?

25 MS. CLEMENT: Objection, your Honor. It's leading,  
26 and it misstates the witness' testimony.

27 THE COURT: Sustained.

28 Q. (By MR. REID) Is there anything about Emeritus

1     itself as a company that -- as you testified -- that you  
2     wouldn't go work for them again?

3     A.       As a company, no.  They're a good company.

4     Q.       Would you want to work in a -- is it your concern  
5     about license and unlicensed individuals that causes you  
6     pause?

7     A.       Only minimally.  It's because I like doing patient  
8     care and hospice.

9     Q.       You were asked a question -- several questions about  
10    administering insulin, and I'd like to follow up on that.

11            You said that you -- when you started your job you  
12    became aware that it had happened; is that correct?

13    A.       That's correct.

14    Q.       Can you -- just explain to the jury a little bit  
15    more about what -- what, if anything, you did about that  
16    practice.

17            MS. CLEMENT:  Objection, your Honor.  It's vague.  
18    Exceeds the scope.

19            THE COURT:  Overruled.

20            THE WITNESS:  Um, when I had learned that prior to  
21    my coming there that some of the med techs helped people by  
22    physically giving them insulin with their little pens,  
23    where you click in the amount and put it into their arm, I  
24    was very upset because that was certainly beyond their  
25    scope.  And I told them all that that was to stop  
26    immediately; that they were allowed to only assist the  
27    resident.  The resident had to do their own finger stick.  
28    They could read their own monitor.  The resident assistant

1 could stand there to make sure that they were using the  
2 equipment properly.

3 On these Novopens, you just click in the amount of  
4 insulin. It's not like the old draw-up method. And then  
5 the resident could put it to their own arm. And it's like  
6 a pen. You just click it and it instantly (snaps fingers)  
7 administers the insulin. But that the resident needed to  
8 do it with themselves. We had very strict guidelines  
9 regarding diabetes and insulin.

10 Q. Okay. We just looked at the 602 -- 602, a form that  
11 was in Mrs. Boice's record. And you were asked some  
12 questions about the timing of the 602. You were also asked  
13 a question about whether it conflicted with other  
14 evaluations in her chart.

15 I want to follow up and find out, as the resident  
16 care director assessing a resident for move-in, would --  
17 what role did the 602 form play in your decision-making?

18 A. Well, first of all, the 602 had to show that if the  
19 patient -- or if the resident had dementia issues, if they  
20 were -- what part of assisted living in our building were  
21 they appropriate for, if they had mild cognitive impairment  
22 versus dementia, or Alzheimer's. It also spoke to whether  
23 they could do some things for themselves. We needed to  
24 know that what they needed was in keeping with what we  
25 could provide as far as assisting them with their  
26 activities of daily living.

27 Q. Okay. As the resident care director and making  
28 these decisions, if the physician's 602 form indicated that



1 the resident was appropriate, but in your assessment you  
2 didn't think the needs could be met, what was the protocol?

3 MS. CLEMENT: Exceeds the scope, your Honor.

4 THE COURT: Sustained.

5 Q. (By MR. REID) You were asked some questions about  
6 your off-the-record conversation with Miss Clement.

7 A. Yes.

8 Q. How long did the conversation last?

9 A. Fifteen or twenty minutes.

10 Q. And you were asked whether you thought that there  
11 was, in this conversation, an effort to taint your  
12 testimony or your answers to questions.

13 Do you have that in mind?

14 A. I'm not sure.

15 Q. Okay. When the judge was reading questions back  
16 from the jury --

17 A. Mm-hmm.

18 Q. -- there was a question about whether you felt that  
19 Miss Clement was trying to taint your answers.

20 Do you remember that?

21 A. I do.

22 Q. Okay. Now, were there any portions of this  
23 conversation that -- that -- well, considering the  
24 conversation, tell the jury if there were any portions that  
25 you felt were designed to try to influence you in some  
26 manner.

27 MS. CLEMENT: Objection, your Honor. It exceeds the  
28 scope. It's improper.

1 THE COURT: Overruled.

2 THE WITNESS: Um, because it was an off-the-record  
3 conversation, Miss Clement was speaking to me about how  
4 they felt about assisted living, and Emerald Hills in  
5 particular, and how they wanted to punish them with money.  
6 And we talked -- before that, we had talked a lot about my  
7 own personal feelings, which have nothing to do with the  
8 law. And I did feel a little shocked. It was a strange  
9 conversation. I didn't realize she was going to share so  
10 much of what their goals were.

11 Q. (By MR. REID) What was -- did you have any  
12 impression as to why she was sharing her goals with you?

13 MS. CLEMENT: Leading.

14 THE COURT: She can answer.

15 THE WITNESS: I think she was trying to win me over.  
16 I -- I guess I was pretty naive about that process.

17 MR. REID: Those are all the questions I have.  
18 Thank you.

19 THE COURT: Miss Clement, do you wish to follow up  
20 any further?

21 MS. CLEMENT: Yeah. Sure.

22 FURTHER RECROSS-EXAMINATION

23 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
24 the Plaintiffs:

25 Q. Different frequencies of the medications that you  
26 talked about with Mr. Reid on his redirect.

27 Do you remember that?

28 About calling home health with regard to wound care

1 and that the home health care doctor would be the one --

2 A. Oh, yes.

3 Q. -- who would be deciding different frequencies of  
4 the wound dressings, the type of dressings, medications.

5 True? Do you remember that?

6 A. He was talking about wound care.

7 Q. Yeah. Okay.

8 So I didn't send you the Kaiser Home Health  
9 documents, true?

10 A. True.

11 Q. Who gave you those -- reviewed those Kaiser Home  
12 Health records with you?

13 MR. REID: Well, that assumes facts not established  
14 and invades the attorney --

15 THE COURT: You opened the door on this.

16 She can answer.

17 THE WITNESS: I went over them with my attorney.

18 Q. (By MS. CLEMENT) Who?

19 A. Mr. Reid and Miss Badawiya.

20 Q. How much time did you spend going over those Kaiser  
21 records?

22 A. I think they were -- I think -- they were sent to  
23 me, and I went over them by myself. They were provided by  
24 them. I went over it by myself, um --

25 Q. And then they showed you the specific areas they  
26 wanted you to focus on for your questioning, true?

27 A. No. We never discussed them. It was sent to my  
28 home. It arrived in the morning, which, where I live, is

1 strange to get something, but -- and then I looked through  
2 them. I think we had a brief discussion about it.

3 Q. Now, there was no time at Emerald Hills, with regard  
4 to Joan Boice and her bedsores and other problems that she  
5 was having, that you were prohibited from contacting her  
6 doctor, Dr. Awan, true?

7 A. True.

8 Q. You could call her doctor. You could raise concerns  
9 about where she was, whether there was enough wound care  
10 for her, whether you had the staff to do the wound care,  
11 true?

12 A. We didn't do wound care.

13 MS. CLEMENT: Move to strike as nonresponsive.

14 THE COURT: Granted.

15 Q. (By MS. CLEMENT) Do you need the question read  
16 back, Miss Stevenson?

17 A. Please.

18 THE COURT: All right. Michelle.

19 (Record read.)

20 MR. REID: That's a compound question, your Honor.

21 THE COURT: Sustained.

22 Q. (By MS. CLEMENT) Isn't it true that you could have  
23 called Dr. Awan at any time and raised any concerns that  
24 you may have had about having the staff that could perform  
25 wound care? True?

26 A. I'm not understanding the question. I'm not sure  
27 whose staff you're talking about.

28 Q. Your staff. Emerald Hills.

1 A. I don't know how to respond. We didn't do wound  
2 care. Can I say no?

3 Q. You could have called Mrs. Boice's physician at any  
4 time if you had concerns that her needs were not being met  
5 at the facility, true?

6 MR. REID: That was asked and answered, your Honor.

7 THE COURT: She can respond.

8 THE WITNESS: True.

9 Q. (By MS. CLEMENT) And you never did, true?

10 A. I don't recall.

11 Q. You never called Dr. Awan, according to the chart,  
12 right?

13 A. According to the chart, I didn't see any evidence of  
14 that.

15 Q. And you know that at the very least you would have  
16 had to have documented communication you had with the  
17 physician in the chart, true?

18 A. I don't know.

19 Q. And you did read that Title 22 front to back, right?

20 A. I did.

21 Q. Mm-hmm. Regarding this question of insulin  
22 injections and your concerns about that, there were  
23 residents in the Memory Care Unit who were on insulin,  
24 true?

25 A. Not to my knowledge.

26 Q. Is that because you just didn't know --

27 A. I don't think --

28 Q. -- the acuity of the residents while you were there

1 because you weren't actually going around and seeing them?

2 MR. REID: The question is vague, your Honor.

3 THE COURT: Overruled.

4 THE WITNESS: You're asking me if I knew, or that I  
5 was going around to see them?

6 Q. (By MS. CLEMENT) Isn't it true that you didn't  
7 actually know what was going on with the residents at  
8 Emerald care (verbatim), what their acuity was, because you  
9 were not going and assessing them?

10 A. I was going into memory care regularly. I do not  
11 believe there was anybody in there on diabetic medication,  
12 on insulin. Not while I was there.

13 MS. CLEMENT: No further questions, your Honor.

14 THE COURT: Anything else, Mr. Reid?

15 MR. REID: No, your Honor.

16 THE COURT: Ladies and gentlemen, do you have any  
17 additional questions for our witness?

18 Counsel approach, please.

19 (Whereupon an unreported bench conference was then  
20 had in open court between the Court and counsel.)

21 THE COURT: Okay. More questions.

22 With regards to the wound care testimony we've heard  
23 that was ordered by the doctor for home health care to  
24 perform --

25 THE WITNESS: Mm-hmm.

26 THE COURT: -- was the RN at Emerald Hills  
27 responsible for ensuring the bathing schedules would  
28 correspond with the wound care orders?

1 THE WITNESS: I don't remember a bathing schedule  
2 order from the doctor with regard to the wound care.

3 MS. CLEMENT: Nonresponsive, your Honor. Move to  
4 strike.

5 THE COURT: Well, I think -- if I can get into this  
6 a little more. The juror wants to know whether or not  
7 there was any type of coordination between bathing  
8 schedules and wound care schedules.

9 THE WITNESS: No. I don't think so.

10 THE COURT: Would you challenge a doctor's frequency  
11 of wound care when you continued to receive care alerts  
12 regarding bedsores?

13 THE WITNESS: In general?

14 It would be discussed with the home health nurse.  
15 They're a professional nurse. They should be able to  
16 communicate with the doctor what the need is.

17 MS. CLEMENT: Move to strike as nonresponsive, your  
18 Honor.

19 THE COURT: Overruled.

20 Would you discuss -- would you challenge a doctor's  
21 frequency for wound care when on-site staff continued to  
22 express concerns about a particular resident?

23 THE WITNESS: We don't typically call the doctor  
24 about that. We would discuss it with the skilled nurse who  
25 was coming in as to what their opinion was. They were the  
26 representative of the doctor. So they would discuss it  
27 with the doctor regarding frequency.

28 THE COURT: Did any of your caregivers actually

1 provide wound care?

2 THE WITNESS: Not that I know of.

3 THE COURT: Did you know that Jenny Hitt sometimes  
4 had to work double shifts or triple shifts?

5 THE WITNESS: Um, there were -- her specifically --  
6 I don't recall anyone ever working 24 hours. Her  
7 specifically, I believe that there were times she would  
8 work a double. Some of our resident assistants liked to  
9 work overtime.

10 THE COURT: Do you recall Miss Hitt?

11 THE WITNESS: I do. I do.

12 THE COURT: Are you aware that she was fired for  
13 making a medication error on a MARs chart?

14 THE WITNESS: Not while I was there.

15 THE COURT: Jenny Hitt testified that she had to  
16 clean the bedsores when the home health nurse wasn't there.

17 Were you aware of that?

18 THE WITNESS: No.

19 THE COURT: At any time did you assess the severity  
20 of the bedsores on Mrs. Boice?

21 THE WITNESS: I don't recall.

22 THE COURT: You stated that every client was weighed  
23 once a month. What, if anything, did you do to assess the  
24 reasons for weight loss in clients -- or residents?

25 THE WITNESS: The only residents that were weighed  
26 once a month was the memory care. And those weights, if  
27 they were significant, even a pound or two, would be  
28 reported to the family or faxed to the doctor.



1 THE COURT: Was this something you did?

2 THE WITNESS: No. The med techs in memory care  
3 would do it.

4 THE COURT: This juror says that since Joan Boice's  
5 weight loss and bedsores were so extreme, why didn't you as  
6 the head nurse act on these issues to better serve  
7 excellent care for her?

8 THE WITNESS: Can you answer -- tell me that  
9 question again, please.

10 THE COURT: Sure. The juror says that since Joan  
11 Boice's weight loss and bedsores were so extreme, why  
12 didn't you as the head nurse act on these issues to better  
13 serve excellent care for her?

14 THE WITNESS: The care was being provided by -- as  
15 ordered by her doctor to home health. It would have been  
16 inappropriate for me to get involved in that. That  
17 wouldn't be his order.

18 THE COURT: Why wasn't Joan Boice transferred more  
19 quickly to a skilled nursing home or hospital?

20 THE WITNESS: I can't speak specifically to her.  
21 But in general --

22 THE COURT: Well, that wasn't the question.

23 THE WITNESS: Okay. Okay.

24 THE COURT: The 602s that we have gone over, this  
25 juror wants to know, was Dr. Awan ever contacted for  
26 clarification?

27 THE WITNESS: I don't know personally, but I didn't  
28 see that in the chart that we received.

1 THE COURT: How did you decide that Mrs. Boice was  
2 capable of giving herself meds?

3 THE WITNESS: I can't speak to her specifically.

4 THE COURT: Are you aware of any basis on which  
5 Emerald Hills could overrule the doctor's written  
6 instructions?

7 THE WITNESS: It would depend if it was an order or  
8 if it was a notation. You cannot overrule a doctor's  
9 order. But a notation is not an order.

10 THE COURT: Did the Kaiser Home Health nurses leave  
11 extra supplies for wound care?

12 THE WITNESS: I believe they did.

13 THE COURT: Were you there when a gas leak occurred?

14 THE WITNESS: I don't think so. No.

15 THE COURT: We heard that certain employees used  
16 their breaks to provide activities for residents.

17 Do you feel that a caregiver or med tech should take  
18 a proper break while -- instead of providing activities for  
19 the residents?

20 THE WITNESS: I do think they should take a proper  
21 break and not do activities with them on their break.  
22 They were not asked to do that, I don't believe. We never  
23 asked them to do something on their break. If they chose  
24 to do something, they could do whatever they wanted to with  
25 their break.

26 THE COURT: This juror saw or heard some testimony  
27 that the number of points assigned to Mrs. Boice went from  
28 47.5 to 100, and heard testimony that the cost of care is

1     somehow related to the number of points assigned to a  
2     resident.

3             THE WITNESS: Uh-huh.

4             THE COURT: This juror wants to know if her cost  
5     went up, why didn't the number of her caregivers go up?

6             THE WITNESS: In memory care, it didn't matter what  
7     your score was. They provided the same care in there.  
8     That point system had today do with the other side, the  
9     assisted living side. Memory care was the max. You -- it  
10    didn't matter what those points said. If you were in  
11    memory care you received -- everybody received the care  
12    that they needed.

13            THE COURT: I'm trying to decide if we need to take  
14    our break now or not.

15            Miss Clement, do you have any follow-up?

16            MS. CLEMENT: Two questions.

17            THE COURT: Mr. Reid, do you have any follow-up?

18            MR. REID: Maybe just a couple.

19            THE COURT: Well, I'd like to finish with this  
20    witness, if we could.

21            So, go ahead.

22            MS. CLEMENT: Is it okay if I --

23            THE COURT: Did you have --

24            MS. CLEMENT: Yes, I do.

25            THE COURT: Then we're going to take our break.

26            MS. CLEMENT: Oh, then we're going to take our  
27    break. Okay. Sorry.

28            THE COURT: Ladies and gentlemen, leave your

1 notebooks on the chairs. Remember the admonitions. Let's  
2 be back, ready to go, at five after 11:00.

3 Miss Stevenson, you can step down.

4 THE WITNESS: Thank you.

5 THE COURT: Be back at five after 11:00.

6 THE WITNESS: Thank you.

7 (Recess.)

8 (Change of court reporters.)

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1       **(The following proceedings were held in open court, in the**  
2                                   **presence of the jury:)**

3           COURT ATTENDANT: Please come to order. Department 45  
4 is once again back in session. The honorable Judge Judy  
5 Hersher now presiding. You may be seated.

6           THE COURT: All right. Ms. Clement.

7           MS. CLEMENT: Thank you, your Honor.

8                                   FURTHER RECROSS-EXAMINATION

9 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
10 the Plaintiffs:

11 Q       The question related to the points that were being  
12 scored for Mrs. Boice that went from 47 to over 100; do you  
13 recall that?

14 A       I do.

15 Q       So those points related to the level of care of  
16 Mrs. Boice; true?

17       The points were related to her level of care?

18 A       True.

19 Q       So that means her acuity; true?

20 A       True.

21 Q       And even though her level in care increased  
22 dramatically, there was no corresponding increase in the  
23 number of caregivers to care for her; true?

24 A       True, not caregivers at our staff, if you're talking  
25 about us.

26 Q       And you don't know how frequently home health was  
27 coming in; true?

28 A       I don't recall.

1 Q Okay. And you, as a nurse, who loves these residents,  
2 and you have one who is laying in bed with multiple pressure  
3 ulcers, weight loss and contractures, you just would say to  
4 yourself, I'll let home health care take care of that?

5 A I didn't have a doctor's order to do anything about it  
6 personally.

7 Q And you're a patient advocate, right?

8 A Nurses, yes.

9 Q And you know as a patient advocate and nurse it's your  
10 responsibility to contact the doctor if a resident is not  
11 getting the care they need; true?

12 A True.

13 THE COURT: Mr. Reid.

14 MR. REID: Yes. Thank you.

15 FURTHER REDIRECT EXAMINATION

16 By BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
17 Defendants:

18 Q In your review of the record did you see any -- any  
19 information that led you to believe that, um, um, the care  
20 that she was -- Ms. Boice was receiving from all involved  
21 wasn't adequate?

22 MS. CLEMENT: Objection, it's vague.

23 THE COURT: Sustained.

24 Q (By MR. REID) When you reviewed the records, was  
25 there, um, any point in time that you had a concern that  
26 through the combination of care that was being delivered to  
27 Mrs. Boice that the care was not adequate?

28 MS. CLEMENT: It's leading and it also --

1 THE COURT: I have a concern, Mr. Reid, that we are  
2 getting into expert witness testimony now.

3 MR. REID: Let me ask it a different way.

4 Q (By MR. REID) Based on your review of the record, did  
5 you see anything that you thought in retrospect should have  
6 triggered you to do something different than what the record  
7 reflects?

8 MS. CLEMENT: Lacks foundation, asks for expert  
9 testimony.

10 THE COURT: Doesn't call for expert testimony. She  
11 can answer.

12 THE WITNESS: Can you ask the question again?

13 MR. REID: May I ask to have it read back, your Honor?

14 THE COURT: Yes.

15 (Whereupon the last question was read back as requested.)

16 THE WITNESS: No. She had multiple services from her  
17 doctor.

18 Q (By MR. REID) Following up on an answer you just gave  
19 to Ms. Clement about whether the level of care increased,  
20 um, you said, Not from our staff. Can you explain what --  
21 what you meant by that?

22 A Um, our staff was doing everything that they could do  
23 for her regarding assisted living. Um, that's why other  
24 services would come in and provide additional care.

25 Q So -- so did the level of care go up based on your  
26 review of the records?

27 MS. CLEMENT: Leading.

28 THE COURT: She can answer.

1           THE WITNESS: It did go up significantly. She had  
2 physical therapy, home health, social worker from Kaiser,  
3 and the doctor involved.

4           MR. REID: Thank you. That is all.

5           Thank you, your Honor.

6           THE COURT: Anything else, Ms. Clement?

7                           FURTHER RECROSS-EXAMINATION

8 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
9 the Plaintiffs:

10 Q       I just want to make sure I understand.

11           You don't know how frequently home health came into  
12 the building to see Mrs. Boice; true?

13           MR. REID: Asked and answered.

14           THE COURT: Overruled.

15           THE WITNESS: Um, I would have to look at the records  
16 again to see what that order was. I don't recall it myself.

17 Q       (By MS. CLEMENT) You don't know how many minutes they  
18 were there or how many days of the week they were there?

19 A       I don't have an independent recollection at this  
20 moment.

21 Q       So you just don't know the answer to that question if  
22 she was getting adequate care then; true?

23 A       That's tough to answer. Her -- her doctor and his  
24 staff were providing her skilled care. I have to trust that  
25 they were doing their job properly.

26 Q       Her doctor was a -- the doctor was a woman.

27 A       Right.

28 Q       Just so you know.



1 MR. REID: That is beyond the scope.

2 Q (By MS. CLEMENT) You don't know how many days while  
3 Mrs. Boice had all of these bed sores that there was no one  
4 coming from home health care to visit her; true?

5 A I don't recall personally, no.

6 MS. CLEMENT: Thank you.

7 MR. REID: Nothing further, your Honor.

8 THE COURT: I'm going to exercise my prerogative and  
9 say we are done with this witness at this time.

10 THE WITNESS: Thank you.

11 THE COURT: Is she subject to recall?

12 MR. REID: Um, yes, your Honor.

13 THE COURT: All right. That means if you get a phone  
14 call from Counsel, you will need to return on the date and  
15 time they indicate, okay?

16 THE WITNESS: Okay.

17 THE COURT: All right. Thank you very much. You're  
18 excused.

19 THE WITNESS: Thank you.

20 MS. CLEMENT: At this time, your Honor, the Plaintiffs  
21 would seek to move into evidence --

22 THE COURT: Well, hold on. Let's let her get off the  
23 stand.

24 MS. CLEMENT: Oh, okay. Sorry.

25 THE COURT: Terrance. All right.

26 What is it that you want to move into evidence?

27 MS. CLEMENT: 281, your Honor.

28 THE COURT: Is there any objection?